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1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007
4 Telephone: (916) 263-8670

FILED

September 11, 2018

DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of:	)	Case No. H-3040 FR
	)	
12 MICHAEL DANIEL RODRIGUEZ,	)	<u>STIPULATION AND AGREEMENT</u>
	)	<u>IN SETTLEMENT AND ORDER</u>
13 Respondent.	)	
14	)	
15	)	

16 It is hereby stipulated by and between Respondent MICHAEL DANIEL
17 RODRIGUEZ ("Respondent"), acting by and through David Hamerslough, Counsel for
18 Respondent, and the Complainant, acting by and through Jason D. Lazark, Counsel for the
19 Department of Real Estate ("Department"), as follows for the purpose of settling and disposing
20 of the Accusation filed on January 17, 2018, in this matter:

21 1. All issues which were to be contested and all evidence which was to be
22 presented by Complainant and Respondent at a formal hearing on the Accusation, which
23 hearing was to be held in accordance with the provisions of the Administrative Procedure Act
24 ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of
25 this Stipulation and Agreement In Settlement and Order ("Stipulation and Agreement").

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1 2. Respondent has received, read, and understands the Statement to
2 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department
3 in this proceeding.

4 3. On February 6, 2018, Respondent filed a Notice of Defense pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the
6 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice
7 of Defense. Respondent acknowledges that Respondent understands that by withdrawing said
8 Notice of Defense, Respondent will thereby waive Respondent's right to require the Real
9 Estate Commissioner ("Commissioner") to prove the allegations in the Accusation at a
10 contested hearing held in accordance with the provisions of the APA and that Respondent will
11 waive other rights afforded to Respondent in connection with the hearing such as the right to
12 present evidence in defense of the allegations in the Accusation and the right to cross-examine
13 witnesses.

14 4. Respondent, pursuant to the limitations set forth below, hereby admits that
15 the factual allegations as set forth in the Accusation filed in this proceeding are true and correct
16 and the Commissioner shall not be required to provide further evidence of such allegations.

17 5. This Stipulation and Agreement is made for the purpose of reaching an
18 agreed disposition of this proceeding and is expressly limited to this proceeding and any other
19 proceeding or case in which the Department, the state or federal government, any agency of
20 this state, or an agency of another state is involved, and shall not be admissible in any other
21 criminal or civil proceeding.

22 6. It is understood by the parties that the Commissioner may adopt the
23 Stipulation and Agreement as his Decision and Order in this matter, thereby imposing the
24 penalties and sanctions on Respondent's real estate licenses and license rights as set forth in the
25 below Order. In the event that the Commissioner in his discretion does not adopt the
26 Stipulation and Agreement, it shall be void and of no effect, and Respondent shall retain the
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1 right to a hearing and proceeding on the Accusation under all the provisions of the APA and
2 shall not be bound by any admission or waiver made herein.

3 7. The Order or any subsequent Order of the Commissioner made pursuant to
4 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further
5 administrative or civil proceedings by the Department with respect to any matters which were
6 not specifically alleged to be causes for accusation in this proceeding.

7 8. Respondent understands that by agreeing to this Stipulation and Agreement,
8 Respondent agrees to be responsible for paying, pursuant to Section 10106 of the Code, the costs
9 of the investigation and enforcement of this case which resulted in the determination that
10 Respondent committed the violations found in the Determination of Issues. The amount of such
11 costs is \$2,048.00.

12 DETERMINATION OF ISSUES

13 By reason of the foregoing stipulations, admissions and waivers, and solely for
14 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed
15 that the following determination of issues shall be made:

16 The acts and omissions of Respondent, as described in the Accusation, are
17 grounds for the suspension or revocation of the license and license rights of Respondent under
18 the provisions of Sections 10177(d) and 10177(g) of the Code, in conjunction with Sections
19 10130, 10159.5, 10166.08 and 10235 of the Code, and Section 2731 of Title 10, of the California
20 Code of Regulations ("Regulations").

21 ORDER

22 All licenses and licensing rights of Respondent under the Real Estate Law are
23 suspended for a period of sixty (60) days from the effective date of this Order; provided,
24 however, that:

25 1. Thirty (30) days of said suspension shall be stayed upon the condition that
26 Respondent petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty
27 pursuant to Section 10175.2 of the Code, at a rate of \$50 for each day of the suspension, for a

1 total monetary penalty of \$1,500.00.

2 a. Said payment shall be in the form of a cashier's check made payable to
3 the Department of Real Estate. Said check must be delivered to the Department, Flag Section at
4 P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Order.

5 b. No further cause for disciplinary action against the real estate license
6 of Respondent occurs within two (2) years from the effective date of the Order in this matter.

7 c. If Respondent fails to pay the monetary penalty in accordance with the
8 terms and conditions of the Decision, the Commissioner may, without a hearing, order the
9 immediate execution of all or any part of the stayed suspension, in which event, Respondent
10 shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the
11 Department under the terms of this decision.

12 d. If Respondent pays the monetary penalty, and if no further cause for
13 disciplinary action against the real estate license of Respondent occurs within two (2) years
14 from the effective date of the Decision herein, then the stay hereby granted shall become
15 permanent.

16 2. The remaining thirty (30) days of said suspension shall be stayed for two (2)
17 years upon the following terms and conditions:

18 a. Respondent shall obey all laws, rules and regulations governing the
19 rights, duties and responsibilities of a real estate licensee in the State of California.

20 b. That no final subsequent determination be made, after hearing or
21 upon stipulation, that cause for disciplinary action against Respondent occurred within two (2)
22 years from the effective date of this Decision and Order. Should such a determination be made,
23 the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or
24 a portion of the stayed suspension. Should no such determination be made, the stay imposed
25 herein shall become permanent.

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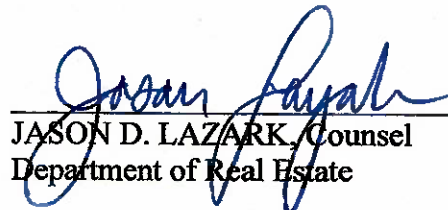
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1 3. Respondent shall, within six (6) months from the effective date of this
2 Decision and Order, take and pass the Professional Responsibility Examination administered by
3 the Department, including the payment of the appropriate examination fee. If Respondent
4 fails to satisfy this condition, Respondent's real estate license shall automatically be suspended
5 until Respondent passes the examination.

6 4. All licenses and licensing rights of Respondent are indefinitely suspended
7 unless or until Respondent pays the sum of \$2,048.00 for the Commissioner's reasonable costs
8 of the investigation and enforcement which led to this disciplinary action. Said payment shall
9 be in the form of a cashier's check or certified check made payable to the Department of Real
10 Estate. The investigative and enforcement costs must be delivered to the Department, Flag
11 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
12 Order.

13
14 7-25-18

15 DATED

16 
17 JASON D. LAZARK, Counsel
18 Department of Real Estate

19 * * *

20 Respondent has read the Stipulation and Agreement in Settlement and Order
21 and its terms are understood by Respondent and are agreeable and acceptable to Respondent.
22 Respondent understands that Respondent is waiving rights given to Respondent by the
23 California Administrative Procedure Act (including but not limited to Sections 11506, 11508,
24 11509 and 11513 of the Government Code), and Respondent willingly, intelligently, and
25 voluntarily waives those rights, including the right of requiring the Commissioner to prove the
26 allegations in the Accusation at a hearing at which Respondent would have the right to cross-
27 examine witnesses against Respondent and to present evidence in defense and mitigation of the
charges.

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Respondent further agrees to send the original signed Stipulation and Agreement by mail to the following address no later than one (1) week from the date the Stipulation and Agreement is signed by Respondent and Respondent's attorney: *Department of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-7007*. Respondent understands and agrees that if they fail to return the original signed Stipulation and Agreement by the due date, Complainant retains the right to set this matter for hearing.

07/25/18
DATED

Michael Daniel Rodriguez
MICHAEL DANIEL RODRIGUEZ
Respondent

* * *

I have reviewed the Stipulation and Agreement as to form and content and have advised my clients accordingly.

DATED

DAVID HAMERSLOUGH,
Attorney for Respondent,
MICHAEL DANIEL RODRIGUEZ

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become effective at 12 o'clock noon on _____.

IT IS SO ORDERED _____

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER

1 Respondent further agrees to send the original signed Stipulation and Agreement
2 by mail to the following address no later than one (1) week from the date the Stipulation and
3 Agreement is signed by Respondent and Respondent's attorney: *Department of Real Estate,*
4 *Legal Section, P.O. Box 137007, Sacramento, California 95813-7007.* Respondent understands
5 and agrees that if they fail to return the original signed Stipulation and Agreement by the due
6 date, Complainant retains the right to set this matter for hearing.

7
8 07/25/18
9 DATED

Michael Daniel Rodriguez
MICHAEL DANIEL RODRIGUEZ
Respondent

10
11 * * *

12 *I have reviewed the Stipulation and Agreement as to form and content and*
13 *have advised my clients accordingly.*

14
15 7/26/18

DATED

D. Hamerslough
DAVID HAMERSLOUGH,
Attorney for Respondent,
MICHAEL DANIEL RODRIGUEZ

16
17
18 * * *

19 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
20 this matter and shall become effective at 12 o'clock noon on _____.

21 IT IS SO ORDERED _____

22
23 DANIEL J. SANDRI
24 ACTING REAL ESTATE COMMISSIONER
25
26
27 _____

1 Respondent further agrees to send the original signed Stipulation and Agreement
2 by mail to the following address no later than one (1) week from the date the Stipulation and
3 Agreement is signed by Respondent and Respondent's attorney: *Department of Real Estate,*
4 *Legal Section, P.O. Box 137007, Sacramento, California 95813-7007.* Respondent understands
5 and agrees that if they fail to return the original signed Stipulation and Agreement by the due
6 date, Complainant retains the right to set this matter for hearing.

7
8
9 _____
DATED

MICHAEL DANIEL RODRIGUEZ,
Respondent

11 * * *

12 *I have reviewed the Stipulation and Agreement as to form and content and*
13 *have advised my clients accordingly.*

14
15 _____
DATED

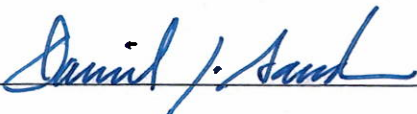
DAVID HAMERSLOUGH,
Attorney for Respondent,
MICHAEL DANIEL RODRIGUEZ

18 * * *

19 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
20 this matter and shall become effective at 12 o'clock noon on Oct. 02, 2018

21 IT IS SO ORDERED September 10, 2018

22
23 DANIEL J. SANDRI
24 ACTING REAL ESTATE COMMISSIONER

25
26 
27 _____