1	BUREAU OF REAL ESTATE FILED
2	P. O. Box 137007
3	Sacramento, CA 95813-7007 JAN 0 8 2016
4	Telephone: (916) 263-8672
5	By Adw
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9	DEFENDE TYPE
10	BEFORE THE
	BUREAU OF REAL ESTATE
11	STATE OF CALIFORNIA
12	***
13	In the Matter of the Accusation of
14	) NO. H-4459 SD KISMIT CYRIACKS-VELLA, and )
15	PAUL ROBERT VELLA,  ) <u>STIPULATION AND AGREEMENT</u> IN SETTLEMENT AND ORDER
16	) <u>IN SETTLEMENT AND ORDER</u> Respondents. )
17	
18	It is hereby stipulated by and between Respondents KISMIT CYRIACKS-VELLA
19	("CYRIACKS-VELLA") and PAUL ROBERT VELLA ("VELLA"), acting by and through
20	Frank M. Buda, Counsel for Respondent, and the Complainant, acting by and through John W.
21	Barron, Counsel for the Bureau of Real Estate ("the Bureau"), as follows for the purpose of
22	settling and disposing of the Accusation filed on February 14, 2013, in this matter:
23	
24	Was to be somested and an expressed which was to be
25	presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing
	was to be held in accordance with the provisions of the Administrative Procedure Act (APA),
26	shall instead and in place thereof be submitted solely on the basis of the provisions of this
27	Stipulation and Agreement in Settlement and Order.

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KISMET CYRIACKS-VELLA and

PAUL ROBERT VELLA

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- 2. Respondents have received, read and understand the Statement to Respondent, the Discovery Provisions of the APA, and the Accusation filed by the Bureau in this proceeding.
- 3. A Notice of Defense was filed on April 25, 2013, by Respondents, pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents acknowledge that they understand that by withdrawing said Notice of Defense, they will thereby waive their right to require the Real Estate Commissioner ("Commissioner") to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that they will waive other rights afforded to them in connection with the hearing such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.
- 4. This Stipulation and Agreement in Settlement and Order is based on the factual allegations contained in the Accusation. In the interests of expedience and economy, Respondents choose not to contest these allegations at hearing, but rather understand that, as a result thereof, these allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. The Commissioner shall not be required to provide further evidence to prove said factual allegations.
- 5. This Stipulation and Respondents' decision not to contest the Accusation are made for the purpose of reaching an agreed disposition of this proceeding and are expressly limited to this proceeding and any other proceeding or case in which the Bureau, the state or federal government, an agency of this state, or an agency of another state is involved.
- 6. It is understood by the parties that the Commissioner may adopt the Stipulation and Agreement in Settlement and Order as his decision in this matter thereby imposing the penalty and sanctions on Respondents' real estate licenses and license rights as set forth in the below "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and Agreement in Settlement and Order, it shall be void and of no

effect, and Respondent shall retain the right to a hearing and proceeding on the Accusation under all the provisions of the APA and shall not be bound by any admission or waiver made herein.

- 7. The Order or any subsequent Order of the Commissioner made pursuant to this Stipulation and Agreement in Settlement and Order shall not constitute an estoppel, merger, or bar to any further administrative or civil proceedings by the Bureau with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.
- 8. VELLA further understands that by agreeing to this Stipulation and Agreement, the findings set forth below in the Determination of Issues become final, and that the Commissioner may charge VELLA for the costs of the investigation herein. The amount of such costs is \$4,325.90.
- 9 VELLA further understands that by agreeing to this Stipulation and Agreement, the findings set forth below in the Determination of Issues become final, and that VELLA shall provide evidence to the Commissioner sufficient to demonstrate that he has repaid to the parties identified in Paragraph 4 of the Accusation herein, all monies placed into his bank account by CYRIACKS-VELLA. If VELLA is unable to locate any of those parties, any monies owed to that party shall escheat to the State of California.
- 10. In lieu of proceeding in this matter in accordance with the provisions of the APA, CYRIACKS-VELLA wishes to voluntarily surrender her real estate salesperson license issued by the Bureau, pursuant to Business and Professions Code ("the Code") Section 10100.2.
- 11. CYRIACKS-VELLA understands that by so voluntarily surrendering her license, CYRIACKS-VELLA may be relicensed as a real estate salesperson or broker only by petitioning for reinstatement pursuant to Section 11522 of the Government Code. CYRIACKS-VELLA also understands that by so voluntarily surrendering her license, CYRIACKS-VELLA agrees to the following:
- A. The filing of this Stipulation and Agreement shall be deemed as CYRIACKS-VELLA's declaration and petition for voluntary surrender.

- B. It shall also be deemed to be an understanding and agreement by CYRIACKS-VELLA that she waives all rights CYRIACKS-VELLA has to require the Commissioner to prove the allegations contained in the Accusation filed in this matter at a hearing held in accordance with the provisions of the APA, and that CYRIACKS-VELLA also waives other rights afforded to CYRIACKS-VELLA in connection with the hearing such as the right to discovery, the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.
- CYRIACKS-VELLA further agrees that upon acceptance by the Commissioner, as evidenced by an appropriate order, all affidavits and all relevant evidence obtained by the Bureau in this matter prior to the Commissioner's acceptance, and all allegations contained in the Accusation filed in the Bureau Case No. H-4459 SD, may be considered by the Bureau to be true and correct for the purpose of deciding whether to grant relicensure or reinstatement pursuant to Government Code Section 11522. In addition, CYRIACKS-VELLA agrees that should she ever seek relicensure, she will provide evidence to the Commissioner sufficient to demonstrate that she has repaid to the parties identified in Paragraph 4 of the Accusation herein, all monies received from clients that were not placed into VELLA's bank account by CYRIACKS-VELLA. If CYRIACKS-VELLA is unable to locate any of those parties, any monies owed to that party shall escheat to the State of California.
- 13. CYRIACKS-VELLA freely and voluntarily surrenders all of CYRIACKS-VELLA's licenses and license rights under the Real Estate Law.

## **DETERMINATION OF ISSUES**

The acts and omissions of Respondents as described in the Accusation are grounds for the suspension or revocation of the license and license rights of Respondents under Sections 10130 (broker license requirement), 10131(b) (broker defined – property management) of the Code, and Section 2835 (commingling) of Title 10, California Code of Regulations; and as to CYRIACKS-VELLA only under Sections 10176(a) (misrepresentation), 10176(g) (taking secret or undisclosed compensation) and 10176(i) (misrepresentation) of the Code.

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

- 1. Sixty (60) days of said suspension shall be stayed, upon the condition that:
- a. VELLA shall obey all laws, rules and regulations governing the rights,

duties and responsibilities of a real estate licensee in the State of California; and

- b. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years from the effective date of this Order. Should such a determination be made, the Commissioner shall, in his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.
- 2. VELLA shall, within six (6) months from the effective date of this Order, take and pass the Professional Responsibility Examination administered by the Bureau, including the payment of the appropriate examination fee. If VELLA fails to satisfy this condition, VELLA's real estate license shall automatically be suspended until VELLA passes the examination.
- 3. VELLA shall, within nine (9) months from the effective date of this

  Decision, present evidence satisfactory to the Commissioner that VELLA has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If VELLA fails to satisfy this condition, the Commissioner may order the suspension of VELLA's license until the VELLA presents such evidence. The Commissioner shall afford Respondent the opportunity for hearing pursuant to the APA to present such evidence.

1	4. All licenses and licensing rights of VELLA are indefinitely suspended
2	unless or until VELLA pays the sum of \$4,325.90 for the Commissioner's reasonable cost of the
3	investigation and enforcement which led to this disciplinary action. Said payment shall be in the
4	form of a cashier's check or certified check made payable to the Real Estate Fund. Said check
5	must be received by the Bureau prior to the effective date of the Order in this matter.
6	5. All licenses and licensing rights of VELLA are indefinitely suspended
7	unless or until VELLA provides evidence to the Commissioner sufficient to demonstrate that
8	he has repaid to the parties identified in Paragraph 4 of the Accusation herein, all monies
9	placed into his bank account by CYRIACKS-VELLA. If VELLA is unable to locate any of
10	those parties, any monies owed to that party shall escheat to the State of California. Said proof
11	must be received by the Bureau prior to the effective date of the Order in this matter.
12	2
13	CYRIACKS-VELLA's petition for voluntary surrender of her real estate
14	salesperson license is accepted as of the effective date of this Order as set forth below, based
15	upon the understanding and agreement expressed in CYRIACKS-VELLA's Declaration
16	incorporated herein as part of this Stipulation and Agreement. CYRIACKS-VELLA's license
17	certificates, pocket cards, and any branch office license certificates shall be sent to the below
18	listed address so that they reach the Bureau on or before the effective date of this Order:
19	BUREAU OF REAL ESTATE
20	Attn: Licensing Flag Section P. O. Box 137013
21	Sacramento, CA 95813-7013
22	
23	128/15
24	DATED JOHN W. BARRON, Counsel
25	BUREAU OF REAL ESTATE
26	/// ///
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KISMET CYRIACKS-VELLA and PAUL ROBERT VELLA

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I have read the Stipulation and Agreement in Settlement and Order and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California APA (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

DATED

9-25-15

DATED

ROBERT PAUL VELLA

Respondent

KISMET CYRIACKS-VELLA

Respondent

I have reviewed this Stipulation and Agreement and Order as to form and content and have advised my client accordingly.

9.25.15

DATED

ERANK M BUDA

Attorney for Respondents

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KISMET CYRIACKS-VELLA and PAUL ROBERT VELLA ;

The foregoing Stipulation and Agreement in Settlement and Order is hereby

adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on JAN 2 8 2016

IT IS SO ORDERED PECEMBER 31, 2005.

WAYNE S. BELL
REAL ESTATE COMMISSIONER

By: JEFFREY MASON Chief Deputy Commissioner