

1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007

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FILED

OCT 17 2017

BUREAU OF REAL ESTATE

By B. Nicholas

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7
8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

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12 In the Matter of the Accusation of) BRE No. H-6375 SAC
13)
13 NORCAL GOLD, INC., ANDREW AVALOS,)
14 INNA INESSA CHERNIOGLO,)
14 and BEVERLY KENDALL,)
15) STIPULATION AND AGREEMENT
15) IN SETTLEMENT AND ORDER
16 Respondents.)

17 It is hereby stipulated by and between NORCAL GOLD, INC. (NG), and
18 BEVERLY KENDALL (KENDALL), collectively Respondents, and their counsel Shannon B.
19 Jones, and the Complainant, acting by and through Richard K. Uno, Counsel for the Bureau of
20 Real Estate; as follows for the purpose of settling and disposing of the Accusation filed on
21 March 21, 2016, and the First Amended Accusation filed on June 1, 2016, in this matter as it
22 pertains to NORCAL GOLD, INC. and BEVERLY KENDALL only.

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

1 2. Respondents have received, read and understand the Statement to Respondent,
2 the Discovery Provisions of the APA and the Accusation filed by the Bureau of Real Estate in
3 this proceeding.

4 3. Respondents filed a Notice of Defense pursuant to Section 11505 of the
5 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
6 Respondents hereby freely and voluntarily withdraw said Notices of Defense. Respondents
7 acknowledge that they understand that by withdrawing said Notices of Defense they will thereby
8 waive their right to require the Commissioner to prove the allegations in the Accusation at a
9 contested hearing held in accordance with the provisions of the APA and that they will waive
10 other rights afforded to them in connection with the hearing such as the right to present
11 evidence in defense of the allegations in the Accusation and the right to cross-examine
12 witnesses.

13 4. Respondents, pursuant to the limitations set forth below, hereby admit that the
14 factual allegations or findings of fact as set forth in the Accusation filed in this proceeding are
15 true and correct and the Real Estate Commissioner shall not be required to provide further
16 evidence of such allegations.

17 5. Respondents agree to testify or to undertake reasonable efforts to make others
18 available at the hearing on the First Amended Accusation on file herein and to otherwise
19 undertake reasonable efforts to cooperate with BRE Counsel to affect such testimony. The
20 Parties agree that Respondents' obligation to undertake reasonable efforts to cooperate with BRE
21 Counsel in making witnesses available for hearing is in consideration of the Bureau's settlement
22 offer.

23 6. It is understood by the parties that the Real Estate Commissioner may adopt
24 the Stipulation and Agreement In Settlement and Order as his Decision in this matter, thereby
25 imposing the penalty and sanctions on Respondents' real estate licenses and license rights as set
26 forth in the below "Order". In the event that the Commissioner in his discretion does not adopt
27 the Stipulation and Agreement In Settlement and Order, it shall be void and of no effect, and

1 Respondents shall retain the rights to a hearing and proceeding on the Accusation under all the
2 provisions of the APA and shall not be bound by any admission or waiver made herein.

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

8 DETERMINATION OF ISSUES

9 By reason of the foregoing stipulations, admissions and waivers, and solely for
10 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and
11 agreed that the acts and/or omissions of Respondents, as described in the Accusation, constitute
12 grounds for the suspension or revocation of the licenses and license rights of NG under the
13 provisions of Sections 10177(g) of the Business and Professions Code (the Code), and constitute
14 grounds for the suspension or revocation of the licenses and license rights of KENDALL under
15 the provisions of Section 10177(g) of the Code.

16 ORDER

17 A. NORCAL GOLD, INC.

18 1. The corporate real estate broker license and license rights of Respondent
19 NORCAL GOLD, INC. (NG), under the Real Estate Law are suspended for a period of sixty
20 (60) days from the effective date of this Order; provided, however, that if NG petitions, thirty
21 (30) days of said suspension shall be stayed upon condition that:

22 a. NG pays a monetary penalty pursuant to Section 10175.2 of the Business and
23 Professions Code at the rate of \$100.00 per day for thirty (30) days of the suspension for a total
24 monetary penalty of \$3,000.00.

25 b. Said payment shall be in the form of a cashier's check or certified check made
26 payable to the Bureau of Real Estate. Said check must be received by the Bureau of Real
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1 Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective
2 date of this Order.

3 c. No further cause for disciplinary action against the real estate license of NG
4 occurs within one year from the effective date of the Decision in this matter.

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

10 e. If NG pays the monetary penalty, and if no further cause for disciplinary action
11 against the real estate license of NG occurs within two (2) years from the effective date of the
12 Decision, the stay hereby granted shall become permanent.

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

15 a. NG shall obey all laws, rules and regulations governing the rights, duties
16 and responsibilities of a real estate licensee in the State of California and;

17 b. That no final subsequent determination be made, after hearing or upon
18 stipulation, that cause for disciplinary action occurred within two (2) years from the effective
19 date of this Order. Should such a determination be made, the Commissioner may, in his
20 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
21 suspension.

22 c. That NG undertakes reasonable efforts to have KENDALL, Tim Yee and
23 Michael Kooken available to testify at the hearing on this matter now set for September 18 and
24 19, 2017, or any other dates, should this matter be continued.

25 B. BEVERLY KENDALL

26 1. The real estate broker license and license rights of Respondent BEVERLY
27 KENDALL (KENDALL), under the Real Estate Law are suspended for a period of sixty (60)

1 days from the effective date of this Order; provided, however, that if KENDALL petitions,
2 thirty (30) days of said suspension shall be stayed upon condition that:

3 a. KENDALL pays a monetary penalty pursuant to Section 10175.2 of the
4 Business and Professions Code at the rate of \$100.00 per day for thirty (30) days of the
5 suspension for a total monetary penalty of \$3,000.00.

6 b. Said payment shall be in the form of a cashier's check or certified check made
7 payable to the Bureau of Real Estate. Said check must be delivered to the Bureau of Real
8 Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective
9 date of this Order.

10 c. No further cause for disciplinary action against the real estate license of
11 KENDALL occurs within two (2) years from the effective date of the Decision in this matter.

12 d. If KENDALL fails to pay the monetary penalty in accordance with the terms
13 and conditions of the Decision, the Commissioner may, without a hearing, order the immediate
14 execution of all or any part of the stayed suspension in which event KENDALL shall not be
15 entitled to any repayment nor credit, prorated or otherwise, for money paid to the Bureau under
16 the terms of this Decision.

17 e. If KENDALL pays the monetary penalty, and if no further cause for
18 disciplinary action against the real estate license of Respondent occurs within two (2) years from
19 the effective date of the Decision, the stay hereby granted shall become permanent.

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

22 a. KENDALL shall obey all laws, rules and regulations governing the rights,
23 duties and responsibilities of a real estate licensee in the State of California, and,

24 b. That no final subsequent determination be made, after hearing or upon
25 stipulation, that cause for disciplinary action occurred within two (2) years from the effective
26 date of this Order. Should such a determination be made, the Commissioner may, in his
27 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed

1 suspension. Should no such determination be made, the stay imposed herein shall become
2 permanent.

3 c. That KENDALL makes herself available to testify at the hearing on this
4 matter, now set for September 18 and 19, 2017, or any other dates, should this matter be
5 continued. KENDALL shall also undertake reasonable efforts to have Tim Yee and Michael
6 Kookan available to testify at the hearing.

7
8 9/21/17
9 DATED

Richard K. Uno
10 RICHARD K. UNO, Counsel
11 BUREAU OF REAL ESTATE

12 * * *

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

21 9/11/17
22 DATED

Beverly Kendall
23 NORCAL GOLD, INC.
24 Respondent
25 By BEVERLY KENDALL,
26 Designated Officer

27 9/11/17
DATED

Beverly Kendall
BEVERLY KENDALL
Respondent

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

9/16/17

DATED



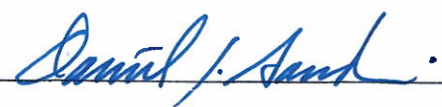
SHANNON B. JONES
Attorney For Respondents

The foregoing Stipulation and Agreement In Settlement and Order is hereby adopted by the Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on NOV 07 2017

IT IS SO ORDERED

10/16/17

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI
Chief Deputy Commissioner