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1	DEPARTMENT OF REAL ESTATE			
2	P. O. Box 137007 Sacramento, CA 95813			
3	Telephone: (916) 576-8700 DEC 1 0 2019			
4	DEPARTMENT OF REAL ESTATE			
5	By X- Knopp			
6	*			
7				
8	BEFORE THE DEPARTMENT OF REAL ESTATE			
9	STATE OF CALIFORNIA			
10	* * *			
11	To: ) No. H-6767 SAC			
12	BEN KINNEY, BEN KINNEY TEAM, ) BKT NAPA, INC., and BKT FOLSOM, INC., ) ORDER TO DESIST AND REFRAIN			
13	) (B&P Code Section 10086)			
14	Respondents. )			
15	The Real Estate Commissioner of the State of California (Commissioner) has			
16	caused an investigation to be made of the activities of BEN KINNEY (KINNEY), BEN			
17	KINNEY TEAM (BKT), BKT NAPA, INC. (BKT-N), and BKT FOLSOM, INC. (BKT-F),			
18	collectively referred to as RESPONDENTS. Based on that investigation, the Commissioner has			
19	determined that RESPONDENTS have engaged in, are engaging in, or are attempting to engage			
20	in, acts or practices constituting violations of the California Business and Professions Code			
21	(Code), including the business of, acting in the capacity of, and/or advertising or assuming to act			
22	as, real estate brokers in the State of California within the meaning of Section 10131(a)			
23	(residential resales) of the Code. Furthermore, based on the investigation, the Commissioner			
24	hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order			
25 26	under the authority of Section 10186 of the Code.			
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1 RESPONDENTS have violated Section 10130 of the Code by engaging in the 2 business of or acting as a real estate broker, within the meaning of Section 10131(a) of the Code 3 without first having obtained real estate broker licenses from the California Department of Real 4 Estate (DEPARTMENT). 5 Whenever acts referred to below are attributed to BKT, BKT-N, or BKT-F, those 6 acts are alleged to have been done by KINNEY, BKT, BKT-N, or BKT-F, or by and/or through 7 one or more agents, associates, and/or co-conspirators, and using other names or fictitious names 8 unknown at this time. 9 FINDINGS OF FACT 10 1. At no time mentioned herein, was BKT licensed by the DEPARTMENT 11 as a corporate real estate broker. BKT was organized as a corporation in the State of 12 Washington. 13 2. At no time mentioned herein, was BKT-N licensed by the 14 DEPARTMENT as a corporate real estate broker. BKT-N was organized as a corporation in the 15 State of Washington. 16 3. At no time mentioned herein, was BKT-F licensed by the DEPARTMENT 17 as a corporate real estate broker. BKT-F was organized as a corporation in the State of 18 Washington. 19 4. At no time mentioned herein, was KINNEY licensed by the 20 DEPARTMENT as a real estate broker. 21 5. At all times mentioned, RESPONDENTS engaged in the business of, 22 acted in the capacity of, advertised, or assumed to act as, a real estate licensee, in the State of 23 California, within the meaning of Section 10131(a) of the Code, including the operation and 24 conduct of a residential resale brokerage wherein RESPONDENTS bought, sold, or offered to 25 buy or sell, solicited or obtained listings of, and negotiated the purchase, sale or exchange of real 26 property or business opportunities, all for or in expectation of compensation, including, but not 27 111

1 limited to: as to BKT-N: 1047 Stonebridge Dr., Napa; California 94558, 105 Kreuzer Ln, Napa, 2 California 94559; and 1257 Rubicon St., Napa, California 94558. As to BKT-F: 7493 Red 3 Willow St., Sacramento, California; 9561 Sheldon Rd., Elk Grove, California 95624; and 3112 4 Corsica Dr., El Dorado Hills, California 95762, 5 6. RESPONDENTS entered into independent contractor agreements with 6 licensed corporate real estate brokers and with individual real estate licensees. 7 7. BKT-N and Live, Love Napa, Inc., a corporate real estate broker licensed 8 by the DEPARTMENT, entered into an independent contractor agreement. 9 8. BKT-N entered into independent contractor agreements with real estate 10 licensees who work for Live, Love Napa, Inc., including but not limited to: Elizabeth Olcott and 11 Ian Zopolos, on or about August 29, 2017, and Sara Medina on or about March 28, 2018. 12 9. BKT-F and Folsom Hall Investors, Inc., a corporate real estate broker 13 licensed by the DEPARTMENT, entered into an independent contractor agreement. 14 10. BKT-F entered into an independent contractor agreement with real estate 15 licensees who work for Folsom Hall Investors, Inc., including but not limited to: Jacob DaRosa 16 and Mark Green on or about January 3, 2018, and Byanna Smith on or about November 27. 17 2017. 18 11. The contracts referenced in Paragraphs 7 and 9, above, are nearly identical. 19 except for the names of the entities. 20 12. The contracts referenced in Paragraphs 8 and 10, above, are nearly 21 identical, except for the names of the parties. 22 13. The Sales Agent Team Member Independent Contractor Agreements 23 contain numerous provisions that indicate that RESPONDENTS are engaged in licensed activity. 24 Such provisions include, but are not limited to, the following provisions, identified by paragraph 25 number in the Agreement in italics: 26 3.6 Contractor (licensee) must submit pending offers to Company (BK entity) 27 for approval.

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1		3.10	Best Practices for Successful Agents- Company sets for	rth duties for		
2	licensees.					
3		3.11	Personal Sales Goals- Company sets forth goals for lice	ensees.		
4		4	Company will compensate Contractor.			
5		4.1	Appointment Leads- Indicates that Company owns lead	ls.		
6		5	Company's Duties and Obligations:			
7		5.I	Support Services include- Transaction closing manager	nent, listing		
8	management and general sales support.					
9		6	Leads, Prospects and Clients:			
10		6.2	Indicates that all lists of leads, prospects or clients belo	ng to Company.		
11		7.1	Exclusive Sale and Listing Agreements- indicates that	Company has a		
12	property interest in listings.					
13		15	Indicates that Company owns all work product, and list	s each item.		
14		14	The Independent Contractor agreement, set forth in Par	agraphs 8 and 10,		
15	above, also contain provisions that indicate licensed activity, including, but not limited to the					
16	following:					
17		3.f	Indicates that Company has to agree to who is hired after	er a certain date.		
18		11	Indicates that Company owns all information and work	for hire.		
19	(Schedule 1) is a Confidentiality Agreement with indicates that Contractor cannot					
20	disclose information, of which Company has exclusive ownership.					
21		14.	The Ben Kinney website indicates that through its Brive	ity Platform, leads		
22	are provided to licensees who partner with Ben Kinney or one of his entities. Transaction					
23	management is another service advertised on the website.					
24			CONCLUSIONS OF LAW			
25		1.	Based on the Findings of Fact contained in Paragraphs	1 through 14,		
26	above, Respondents have performed and/or participated in residential resale activities which					
27	require a real estate license under Section 10131(a) of the Code, during a period of time when					
	ORDER TO DESIS	T AND R	EFRAIN <sup>-</sup> - 4 -	BEN KINNEY ET AL		

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1	none of the RESPONDENTS were licensed by the DEPARTMENT as a real estate salesperson,			
2	real estate broker, or corporate real estate broker, in violation of Section 10130 of the Code.			
3	DESIST AND REFRAIN ORDER			
4	NOW, THEREFORE, BEN KINNEY, BEN KINNEY TEAM, BKT NAPA,			
5	INC., AND BKT FOLSOM, INC., ARE HEREBY ORDERED TO IMMEDIATELY DESIST			
6	AND REFRAIN from performing any and all acts within the State of California for which a real			
7	broker license is required, unless and until they obtain a real estate broker license.			
8	DATED: November 27, 2019			
9	DANIEL J. SANDRI			
10	ACTING REAL ESTATE COMMISSIONER			
11				
12	Darint / Nant.			
13				
14				
15	NOTICE			
16	Business and Professions Code Section 10139 provides that "Any person acting			
17 18	as a real estate broker or real estate salesperson without a license or who advertises using words			
18	indicating that he or she is a real estate broker without being so licensed shall be guilty of a			
20	public offense punishable by a fine not exceeding twenty thousand dollars (\$20,000), or by			
20	imprisonment in the county jail for a term not to exceed six months, or by both fine and			
22	imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars			
23	(\$60,000)"			
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