

FILED

OCT 09 2019

DEPARTMENT OF REAL ESTATE

By           P. dew          

1 Department of Real Estate  
2 P.O. Box 137007  
3 Sacramento, CA 95818-7007

4 Telephone: (916) 576-8700

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of  
12 3 POINT REAL ESTATE & CONSTRUCTION  
13 and CHRIS E. MACPHAIL,  
14 Respondents.

No. H-6769 SAC

STIPULATION AND AGREEMENT  
IN SETTLEMENT AND ORDER

15 It is hereby stipulated by and between 3 POINT REAL ESTATE &  
16 CONSTRUCTION (3 POINT) and CHRIS E. MACPHAIL (MACPHAIL), collective  
17 Respondents, and the Complainant, acting by and through Megan Lee Olsen, Counsel for the  
18 Department of Real Estate (Department), as follows for the purpose of settling and disposing of  
19 the Accusation filed on February 25, 2019, in this matter:

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

25 2. Respondents have received, read, and understand the Statement to  
26 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department in  
27 this proceeding.

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

10           4.     This Stipulation is based on the factual allegations contained in the  
11 Accusation. In the interest of expediency and economy, Respondents choose not to contest these  
12 factual allegations, but to remain silent and understand that, as a result thereof, these factual  
13 statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set  
14 forth below. The Commissioner shall not be required to provide further evidence to prove such  
15 allegations.

16           5.     It is understood by the parties that the Commissioner may adopt the  
17 Stipulation as his Decision and Order in this matter thereby imposing the penalty and sanctions  
18 on Respondents' real estate licenses and license rights as set forth in the below "Order." In the  
19 event that the Commissioner in his discretion does not adopt the Stipulation, it shall be void and  
20 of no effect, and Respondents shall retain the right to a hearing and proceeding on the  
21 Accusation under all the provisions of the APA and shall not be bound by any admission or  
22 waiver made herein.

23           6.     This Decision and Order or any subsequent Order of the Commissioner  
24 made pursuant to this Stipulation shall not constitute an estoppel, merger or bar to any further  
25 administrative or civil proceedings by the Department with respect to any matters which were  
26 not specifically alleged to be causes for accusation in this proceeding.

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1                   3. The restricted broker license issued to MACPHAIL may be suspended  
2 prior to hearing by Order of the Commissioner in the event of MACPHAIL's conviction or plea  
3 of nolo contendere to a crime which is substantially related to MACPHAIL's fitness or capacity  
4 as a real estate licensee.

5                   4. The restricted broker license issued to MACPHAIL may be suspended  
6 prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that  
7 MACPHAIL has violated provisions of the California Real Estate Law, the Subdivided Lands  
8 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted  
9 license.

10                   5. MACPHAIL shall not be eligible to apply for the issuance of an  
11 unrestricted real estate broker license nor for removal of any of the conditions, limitations or  
12 restrictions of a restricted license broker license until two (2) years have elapsed from the  
13 effective date of this Decision and Order. MACPHAIL shall not be eligible to apply for any  
14 unrestricted licenses until all restrictions attaching to the license have been removed.

15                   6. MACPHAIL shall, within nine (9) months from the effective date of this  
16 Decision and Order, present evidence satisfactory to the Commissioner that MACPHAIL has,  
17 since the most recent issuance of an original or renewal real estate license, taken and successfully  
18 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate  
19 Law for renewal of a real estate license. If MACPHAIL fails to satisfy this condition,  
20 MACPHAIL's real estate license shall automatically be suspended until MACPHAIL presents  
21 evidence satisfactory to the Commissioner of having taken and successfully completed the  
22 continuing education requirement. Proof of completion of the continuing education courses must  
23 be delivered to the Department of Real Estate, Flag Section, at P.O. Box 137013, Sacramento,  
24 CA 95813-7013.

25                   7. All licenses and licensing rights MACPHAIL are indefinitely suspended  
26 unless or until MACPHAIL provides proof satisfactory to the Commissioner, of having taken  
27 and successfully completed the continuing education course on trust fund accounting and



1 handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of  
2 satisfaction of these requirements includes evidence that MACPHAIL has successfully  
3 completed the trust fund account and handling continuing education courses, no earlier than 120  
4 days prior to the effective date of the Decision and Order in this matter. Proof of completion of  
5 the trust fund accounting and handling course must be delivered to the Department of Real  
6 Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date  
7 of this Decision and Order.

8 3 POINT REAL ESTATE & CONSTRUCTION and CHRIS E. MACPHAIL

9 8. Pursuant to Section 10148 of the Code, Respondents shall, jointly and  
10 severally, pay the sum of \$5,628.32. for the Commissioner's cost of the audit which led to this  
11 disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an  
12 invoice therefore from the Commissioner. Payment of audit costs should not be made until  
13 Respondents receives the invoice. If Respondents fail to satisfy this condition in a timely  
14 manner as provided for herein, Respondents' real estate licenses shall automatically be  
15 suspended until payment is made in full, or until a decision providing otherwise is adopted  
16 following a hearing held pursuant to this condition.

17 9. Pursuant to Section 10148 of the Code, Respondents shall pay the  
18 Commissioner's reasonable cost, not to exceed \$7,035.40. for an audit to determine if  
19 Respondents have corrected the violations found in the "Determination of Issues". In calculating  
20 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated  
21 average hourly salary for all persons performing audits of real estate brokers, and shall include  
22 an allocation for travel time to and from the auditor's place of work. Respondents shall pay such  
23 cost within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of  
24 the audit costs should not be made until Respondents receives the invoice. If Respondents fail to  
25 satisfy this condition in a timely manner as provided for herein, Respondents' real estate licenses  
26 shall automatically be suspended until payment is made in full, or until a decision providing  
27 otherwise is adopted following a hearing held pursuant to this condition.



1                    10. All licenses and licensing rights of Respondents are indefinitely suspended  
2 unless or until Respondents, jointly and severally, pay the sum of \$1,832.90 for the  
3 Commissioner's reasonable cost of the investigation which led to this disciplinary action. Said  
4 payment shall be in the form of a cashier's check made payable to the Department of Real Estate,  
5 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this  
6 Stipulation.

7  
8                    8.14.2019  
9 DATED

  
MEGAN LEE OLSEN, Counsel  
DEPARTMENT OF REAL ESTATE

11                    \* \* \*

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

19                    Respondents further agree to send the original signed Stipulation by mail to the  
20 following address no later than one (1) week from the date the Stipulation is signed by  
21 Respondents: *Department of Real Estate, Legal Section, P.O. Box 137007, Sacramento,*  
22 *California 95813-7007.* Respondents understand and agree that if they fail to return the  
23 original signed Stipulation by the due date, Complainant retains the right to set this matter for  
24 hearing.

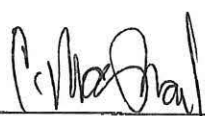
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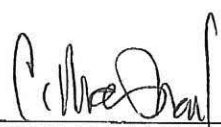
DATED



3 POINT REAL ESTATE &  
CONSTRUCTION, Respondent  
By: CHRIS E. MACPHAIL  
Designated Officer

8-6-19

DATED



CHRIS E. MACPHAIL, Respondent

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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  
OCT 30 2019

IT IS SO ORDERED September 18, 2019

DANIEL J. SANDRI  
Acting Real Estate Commissioner

