

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

4 Telephone: (916) 576-8700

FILED

DEC 24 2020

DEPARTMENT OF REAL ESTATE

By S. Hoops

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

10 In the Matter of the Accusation of:

) Case No. H-6804 SAC

11)
12 PPM INVESTMENTS, INC.)
and DARUS KAYN TRUTNA,)

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

13)
14 Respondents.)

15 It is hereby stipulated by and between Respondents PPM INVESTMENTS, INC.
16 ("PPM"), DARUS KAYN TRUTNA ("TRUTNA") (collectively referred to as "Respondents"),
17 acting by and through Shannon B. Jones, counsel for Respondents, and the Complainant, acting
18 by and through Jason D. Lazark, Counsel for the Department of Real Estate ("Department"), as
19 follows for the purpose of settling and disposing of the Second Amended Accusation filed on
20 August 10, 2020, in this matter:

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

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

4 3. On October 15, 2019, Respondents filed Notices of Defense pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the
6 allegations in the Second Amended Accusation. Respondents hereby freely and voluntarily
7 withdraw said Notices of Defense. Respondents acknowledge that they understand that by
8 withdrawing said Notices of Defense they will thereby waive their rights to require the
9 Commissioner to prove the allegations in the Second Amended Accusation at a contested
10 hearing held in accordance with the provisions of the APA and that they will waive other rights
11 afforded to them in connection with the hearing such as the right to present evidence in defense
12 of the allegations in the Second Amended Accusation and the right to cross-examine witnesses.

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

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

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

6 8. Respondents understand that by agreeing to this Stipulation and Agreement,
7 Respondents agree to be responsible for jointly and severally paying, pursuant to Section 10106
8 of the Business and Professions Code ("the Code"), the costs of the investigation and
9 enforcement of this case which resulted in the determination that Respondents committed the
10 violation(s) found in the Determination of Issues. The amount of such cost is \$3,608.70.

11 9. Respondents further understand that by agreeing to this Stipulation and
12 Agreement, Respondents agree to be responsible for jointly and severally paying, pursuant to
13 Section 10148 of the Code, the costs of the audit which resulted in the determination that
14 Respondents committed the trust fund violation(s) found in the Determination of Issues. The
15 amount of such costs audit costs is \$10,272.36.

16 10. Respondents further understand that by agreeing to this Stipulation and
17 Agreement, the findings set forth below in the Determination of Issues become final, and that the
18 Commissioner may charge Respondents for the costs of any audit conducted pursuant to Section
19 10148 of the Code to determine if the violations have been corrected and hold Respondents
20 responsible for paying the costs of the follow-up audit. The maximum costs of said follow-up
21 audit shall not exceed \$12,840.45.

22 11. Respondents further understand that by agreeing to this Stipulation and
23 Agreement, Respondents agree to be responsible for reimbursing, or making a good faith effort
24 to provide reimbursements as described below on page 8, Paragraph 4, credit reporting fees to
25 rental applicants who paid such fees between January 1, 2017 to April 30, 2018, where

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1 Respondents did not access a consumer credit report for the corresponding rental applicant. The
2 total amount of this reimbursement is \$11,676.84 as identified in Department Audit No.
3 OK 17-0108.

4 **DETERMINATION OF ISSUES**

5 By reason of the foregoing stipulations, admissions, and waivers, and solely for
6 the purpose of settlement of the pending Second Amended Accusation without further
7 proceedings, it is stipulated and agreed that the following Determination of Issues shall be made:

8 The acts and/or omissions of Respondent PPM, as described in the Second
9 Amended Accusation, are grounds for the suspension or revocation of the licenses and license
10 rights of Respondent PPM under the provisions of Sections 10145, 10145(g), 10159.5, 10161.8,
11 10176(a), 10176(i), 10177(d), 10177(g), and 10177(j) of the Code, and Sections 2731, 2831.1,
12 2831.2, 2832.1, of Title 10, California Code of Regulations ("the Regulations").

13 The acts and/or omissions of Respondent TRUTNA, as described in the Second
14 Amended Accusation, are grounds for the suspension or revocation of the licenses and license
15 rights of Respondent TRUTNA under the provisions of Sections 10145, 10145(g), 10159.2,
16 10159.5, 10161.8, 10176(a), 10176(i), 10177(d), 10177(g), 10177(h), and 10177(j) of the Code,
17 and Sections 2725, 2731, 2831.1, 2831.2, 2832.1, of the Regulations.

18 **ORDER**

19 **I. AS TO PPM**

20 1. The corporate real estate broker license and license rights of Respondent PPM
21 under the Real Estate Law are revoked; provided, however, a restricted corporate real estate
22 broker license shall be issued to Respondent PPM pursuant to Section 10156.5 of the Code if
23 Respondent PPM makes application therefore and pays to the Department the appropriate fee for
24 the restricted license within 90 days from the effective date of this Decision.

25 2. The restricted license issued to Respondent PPM shall be subject to all of the
26 provisions of Section 10156.7 of the Code as to the following limitations, conditions and
27 restrictions imposed under authority of Section 10156.6 of that Code: The restricted license

1 issued to Respondent PPM shall be suspended prior to hearing by Order of the Commissioner on
2 evidence satisfactory to the Commissioner that Respondent PPM has violated provisions of the
3 California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate
4 Commissioner, or conditions attaching to the restricted license.

5 3. Respondent PPM shall not be eligible to apply for the issuance of an
6 unrestricted real estate license nor for removal of any of the conditions, limitations or restrictions
7 of a restricted license until three (3) years have elapsed from the effective date of this Decision.

8 II. AS TO TRUTNA

9 All licenses and licensing rights of Respondent TRUTNA under the Real Estate
10 Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to
11 Respondent TRUTNA pursuant to Section 10156.5 of the Code if Respondent TRUTNA makes
12 application therefore and pays to the Department the appropriate fee for the restricted
13 salesperson license within 90 days from the effective date of this Decision.

14 1. The restricted license issued to Respondent TRUTNA shall be subject to all of
15 the provisions of Section 10156.7 of the Code as to the following limitations, conditions and
16 restrictions imposed under authority of Section 10156.6 of that Code:

17 (a) The restricted license issued to Respondent TRUTNA shall be suspended
18 prior to hearing by Order of the Commissioner in the event of
19 Respondent TRUTNA's conviction (including by plea of guilty or nolo
20 contendere) to a crime which is substantially related to Respondent
21 TRUTNA's fitness or capacity as a real estate licensee; and

22 (b) The restricted license issued to Respondent TRUTNA shall be suspended
23 prior to hearing by Order of the Commissioner on evidence satisfactory
24 to the Commissioner that Respondent TRUTNA has violated provisions
25 of the California Real Estate Law, the Subdivided Lands Law,
26 Regulations of the Real Estate Commissioner, or conditions attaching to
27 the restricted license.

1 2. Respondent TRUTNA shall not be eligible to apply for the issuance of an
2 unrestricted real estate license nor for removal of any of the conditions, limitations or restrictions
3 of a restricted license until four (4) years have elapsed from the effective date of this Decision.

4 3. Respondent TRUTNA shall notify the Commissioner in writing within 72
5 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real
6 Estate, Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date
7 of Respondent TRUTNA's arrest, the crime for which Respondent TRUTNA was arrested and
8 the name and address of the arresting law enforcement agency. Respondent TRUTNA's failure
9 to timely file written notice shall constitute an independent violation of the terms of the restricted
10 license and shall be grounds for the suspension or revocation of that license.

11 4. Respondent TRUTNA shall, within nine (9) months from the effective date of
12 this Decision, present evidence satisfactory to the Commissioner that Respondent TRUTNA has,
13 since the most recent issuance of an original or renewal real estate license, taken and successfully
14 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
15 Law for renewal of a real estate license. If Respondent TRUTNA fails to satisfy this condition,
16 the Commissioner shall order the suspension of the restricted license until the Respondent
17 TRUTNA presents such evidence. The Commissioner shall afford Respondent TRUTNA the
18 opportunity for hearing pursuant to the APA to present such evidence.

19 5. All licenses and licensing rights of Respondent TRUTNA are indefinitely
20 suspended unless or until Respondent TRUTNA provides proof satisfactory to the
21 Commissioner, of having taken and successfully completed the continuing education course on
22 trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section
23 10170.5 of the Code. Proof of satisfaction of these requirements includes evidence that
24 TRUTNA has successfully completed the trust fund accounting and handling continuing
25 education course, no earlier than one hundred twenty (120) days prior to the effective date of the
26 Order in this matter. Proof of completion of the trust fund accounting and handling course must
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1 be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento,
2 CA 95813-7013 or by fax at 916-263-8785, prior to the effective date of this Order.

3 6. Respondent TRUTNA shall, within nine (9) months from the issuance of the
4 Order, take and pass the Professional Responsibility Examination administered by the
5 Department, including the payment of the appropriate examination fee. All licenses and
6 licensing rights of Respondent TRUTNA shall be indefinitely suspended unless or until
7 Respondent TRUTNA passes the examination.

8 III. AS TO BOTH PPM AND TRUTNA

9 1. All licenses and licensing rights of Respondents, are indefinitely suspended
10 unless or until Respondents, jointly and severally, pay the sum of \$3,608.70 for the
11 Commissioner's reasonable cost of the investigation and enforcement which led to this
12 disciplinary action. Said payment shall be in the form of a cashier's check or certified check
13 made payable to the Department of Real Estate. The investigative and enforcement costs must
14 be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento,
15 CA 95813-7013, prior to the effective date of this Order.

16 2. Respondents shall jointly and severally pay the sum of \$10,272.36 for the
17 Commissioner's cost of the audit which led to this disciplinary action. Respondents shall
18 jointly and severally pay such cost within sixty (60) days of receiving an invoice therefore
19 from the Commissioner. The Commissioner shall indefinitely suspend all licenses and
20 licensing rights of Respondents pending a hearing held in accordance with Section 11500, et
21 seq., of the Government Code, if payment is not timely made as provided for herein, or as
22 provided for in a subsequent agreement between Respondents and the Commissioner. The
23 suspension shall remain in effect until payment is made in full or until Respondents enter into
24 an agreement satisfactory to the Commissioner to provide for payment, or until a decision
25 providing otherwise is adopted following a hearing held pursuant to this condition.

26 3. Respondents shall jointly and severally pay the Commissioner's costs, not to
27 exceed \$12,840.45, of any audit conducted pursuant to Section 10148 of the Code to determine

1 if Respondents have corrected the violations described in the Determination of Issues, above,
2 and any other violations found in the audit which led to this disciplinary action. In calculating
3 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
4 average hourly salary for all persons performing audits of real estate brokers, and shall include
5 an allocation for travel time to and from the auditor's place of work. Respondents shall jointly
6 and severally pay such cost within sixty (60) days of receiving an invoice therefore from the
7 Commissioner detailing the activities performed during the audit and the amount of time spent
8 performing those activities. If Respondents fail to jointly and severally pay such cost within
9 the sixty (60) days, the Commissioner shall indefinitely suspend all licenses and licensing
10 rights of Respondents under the Real Estate Law until payment is made in full or until
11 Respondents enter into an agreement satisfactory to the Commissioner to provide for payment.
12 Upon full payment, the indefinite suspension provided for in this paragraph shall be stayed.

13 4. Within one hundred twenty (120) days of the effective date of this Order,
14 Respondents shall provide proof satisfactory to the Commissioner that Respondents either
15 reimbursed credit reporting fees, or made a good faith efforts to reimburse credit reporting
16 fees, to rental applicants that paid such fees to Respondents between January 1, 2017 to April
17 30, 2018, and where Respondents did not access a consumer credit report for the corresponding
18 rental applicants. The total amount of this reimbursement is \$11,676.84 as determined in the
19 Department Audit No. OK 17-0108. Proof of satisfaction of this reimbursement requirement
20 includes a copy of a cancelled check to each rental applicant from whom credit reporting fees
21 were collected, and/or written confirmation from each rental applicant from whom credit
22 reporting fees were collected attesting that a reimbursement has been received. Proof of
23 reimbursement must be delivered to the Department of Real Estate of Real Estate, Flag Section
24 at P.O. Box 137013, Sacramento, CA 95813-7013, within one hundred twenty (120) days of
25 the effective date of this Order. In the event that Respondents, after making a minimum of
26 three (3) good faith written attempts, cannot locate a rental applicant entitled to a
27 reimbursement, as described above in this paragraph, Respondents shall provide the

1 Department with proof satisfactory to the Commissioner that Respondents have made all
2 necessary arrangements to have the unpaid reimbursements escheat to the State of California.
3 In the event that Respondents fail to provide the Commissioner with sufficient evidence that
4 Respondents either reimbursed said rental applicants, or caused the unreimbursed amount to
5 escheat to the State of California for those rental applicants who cannot be located after a good
6 faith effort, the Commissioner shall indefinitely suspend all licenses and licensing rights of
7 Respondents under the Real Estate Law until payment as described above is made in full or
8 until Respondents enter into an agreement satisfactory to the Commissioner to provide for such
9 payment.

10
11 8-13-2020

12 DATED

13 Jason D. Lazark
14 JASON D. LAZARK, Counsel III
Department of Real Estate

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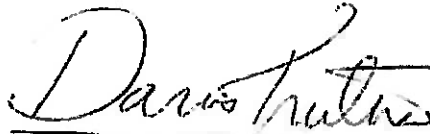
16 I have read the Stipulation and Agreement and its terms are understood by me
17 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by
18 the California Administrative Procedure Act (including but not limited to Sections 11506,
19 11508, 11509 and 11513 of the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

23 Respondents and Respondents' attorney further agree to send the original signed
24 Stipulation and Agreement by mail to the following address no later than one (1) week from the
25 date the Stipulation and Agreement is signed by Respondents and Respondents' attorney:
26 Department of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-
27 7007.

1 Respondents and Respondents' attorney understand and agree that if they fail to return the
2 original signed Stipulation and Agreement by the due date, Complainant retains the right to set
3 this matter for hearing.

4 8/12/2020

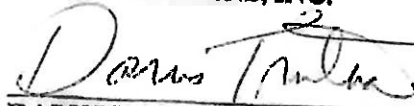
5 DATED



DARUS KAYN TRUTNA
Designated Officer for Respondent
PPM INVESTMENTS, INC.

7 8/12/2020

8 DATED



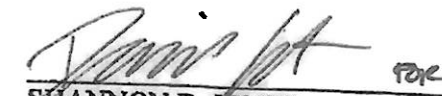
DARUS KAYN TRUTNA
Respondent

11 * * *

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

14 8/12/20

15 DATED



SHANNON B. JONES
Attorney for Respondents,
PPM INVESTMENTS, INC., and
DARUS KAYN TRUTNA

19 * * *

20 The foregoing Stipulation and Agreement is hereby adopted as my Decision in
21 this matter and shall become effective at 12 o'clock noon on JAN 15 2021

22 IT IS SO ORDERED 10-20-20, 2020.

23 REAL ESTATE COMMISSIONER


DOUGLAS R. McCAULEY