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2 Department of Real Estate  
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FILED

DEC 16 2009

DEPARTMENT OF REAL ESTATE

By K. Contreras

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

11 \* \* \*

12 In the Matter of the Accusation of )  
13 )  
14 PACIFIC CAPITAL HOLDINGS, INC., )  
15 a Corporation, )  
16 ROBERT STEVEN PIERCE, and )  
17 MATTHEW PETER MURPHY, )  
Respondents. )

NO. H-10668 SF

STIPULATION AND AGREEMENT  
IN SETTLEMENT  
AND ORDER

18 It is hereby stipulated by and between Respondents PACIFIC CAPITAL  
19 HOLDINGS, INC. (herein "PCHI"), ROBERT STEVEN PIERCE (herein "PIERCE"), and  
20 MATTHEW PETER MURPHY (herein "MURPHY") (herein jointly "Respondents"),  
21 individually and jointly, by and through Mary E. Work, attorney of record herein for  
22 Respondents, and the Complainant, acting by and through Mary F. Clarke, Counsel for the  
23 Department of Real Estate (herein "the Department"), as follows for the purpose of settling and  
24 disposing of the Accusation filed on May 5, 2009, in this matter:

25 1. All issues which were to be contested and all evidence which was to be  
26 presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing  
27 was to be held in accordance with the provisions of the Administrative Procedure Act (herein

1 APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this  
2 Stipulation and Agreement in Settlement and Order.

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

6 3. A Notice of Defense was filed on May 13, 2009, by Respondents pursuant to  
7 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations  
8 in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense.  
9 Respondents acknowledge that they understand that by withdrawing said Notice of Defense they  
10 will thereby waive their right to require the Real Estate Commissioner (herein "Commissioner")  
11 to prove the allegations in the Accusation at a contested hearing held in accordance with the  
12 provisions of the APA and that they will waive other rights afforded to them in connection with  
13 the hearing such as the right to present evidence in defense of the allegations in the Accusation  
14 and the right to cross-examine witnesses.

15 4. Respondents, pursuant to the limitations set forth below, hereby admit that  
16 the factual allegations pertaining to them in the Accusation filed in this proceeding are true and  
17 correct (except for Section 2831.1 of Title 10, Chapter 6 of the California Code of Regulations  
18 (herein the "Regulations"), as described in Paragraphs 10 and 14, subsection (c) on Pages 4 and 5  
19 of the Accusation) and the Commissioner shall not be required to provide further evidence of  
20 such allegations.

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

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

6           7. Respondents understand that by agreeing to this Stipulation and Agreement  
7 in Settlement and Order, Respondents jointly and severally agree to pay, pursuant to Section  
8 10148 of the Business and Professions Code ("herein the Code"), the cost of the audit which  
9 resulted in the determination that Respondents committed the trust fund violations found in  
10 Paragraph I, below, of the Determination of Issues. The amount of said cost is \$4,418.90.

11           8. Respondents further understand that by agreeing to this Stipulation and  
12 Agreement in Settlement and Order, the findings set forth below in the Determination of Issues  
13 become final, and that the Commissioner may charge said Respondents, jointly and severally,  
14 for the costs of any audit conducted pursuant to Section 10148 of the Code to determine if the  
15 trust fund violations found in Paragraph I, below, of the Determination of Issues have been  
16 corrected. The maximum costs of said audit shall not exceed \$4,418.90.

#### DETERMINATION OF ISSUES

##### I

17           The acts and omissions of Respondents as described in the Accusation are  
18 grounds for the suspension or revocation of the licenses and license rights of Respondents under  
19 the following provisions of the Code, and/or Regulations:  
20

21           (a) as to Paragraph 10(a) and PCHI under Section 10145 of the Code and  
22 Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;

23           (b) as to Paragraph 10(b) and PCHI under Section 10145 of the Code and  
24 Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;

25           (c) as to Paragraph 10(d) and PCHI under Section 10145 of the Code and  
26 Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;  
27

1 (d) as to Paragraph 10(e) and PCHI under Section 10176(e) of the Code and  
2 2835 of the Regulations;

3 (e) as to Paragraph 11(a) and PCHI under Section 10160 of the Code and  
4 Section 2753 of the Regulations in conjunction with Section 10177(d) of the Code;

5 (f) as to Paragraph 11(b) and PCHI under Section 2726 of the Regulations in  
6 conjunction with Section 10177(d) of the Code;

7 (g) as to Paragraph 12 and PIERCE under Sections 10159.2, 10177(g) and (h)  
8 of the Code and Section 2725 of the Regulations; and,

9 (h) as to Paragraph 13 and MURPHY under Sections 10159.2, 10177(g) and  
10 (h) of the Code and Section 2725 of the Regulations.

11 ORDER

12 I

13  
14 A. All licenses and licensing rights of Respondent PCHI under the Real Estate Law are  
15 suspended for a period of sixty (60) days from the effective date of this Order; provided,  
16 however, that:

17 1. Thirty (30) days of said suspension shall be stayed for two (2) years upon the  
18 following terms and conditions:

19 (a) Respondent PCHI shall obey all laws, rules and regulations governing the  
20 rights, duties and responsibilities of a real estate licensee in the State of  
21 California; and,

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

- 1           2.   The remaining thirty (30) days of said 60-day suspension shall be stayed upon the  
2           condition that Respondent PCHI petitions pursuant to Section 10175.2 of the Code  
3           and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of  
4           \$50.00 for each day of the suspension for a total monetary penalty of \$1,500.00:
- 5           (a)   Said payment shall be in the form of a cashier's check or certified check made  
6                 payable to the Recovery Account of the Real Estate Fund. Said check must be  
7                 delivered to the Department prior to the effective date of the Order in this  
8                 matter.
- 9           (b)   No further cause for disciplinary action against the real estate licenses of  
10                 Respondent PCHI occurs within two (2) years from the effective date of the  
11                 Decision in this matter.
- 12           (c)   If Respondent PCHI fails to pay the monetary penalty as provided above prior to  
13                 the effective date of this Order, the stay of the suspension shall be vacated as to  
14                 Respondent PCHI and the order of suspension shall be immediately executed,  
15                 under this Paragraph I of this Order, in which event Respondent PCHI shall not  
16                 be entitled to any repayment nor credit, prorated or otherwise, for the money  
17                 paid to the Department under the terms of this Order.
- 18           (d)   If Respondent PCHI pays the monetary penalty and any other moneys due under  
19                 this Stipulation and Agreement in Settlement and Order and if no further cause  
20                 for disciplinary action against the real estate license of Respondent PCHI occurs  
21                 within two (2) years from the effective date of this Order, the entire stay hereby  
22                 granted under Paragraph I of this Order, as to Respondent PCHI only, shall  
23                 become permanent.
- 24           3.   Pursuant to Section 10148 of the Code, Respondent PCHI, shall, jointly and severally  
25                 with Respondents PIERCE and MURPHY pay the sum of \$4,418.90 for the  
26                 Commissioner's cost of the audit which led to this disciplinary action. Respondents  
27                 shall pay such cost within sixty (60) days of receiving an invoice therefor from the

1 Commissioner. The Commissioner may indefinitely suspend all licenses and  
2 licensing rights pending a hearing held in accordance with Section 11500, et seq., of  
3 the Government Code, if payment is not timely made as provided for herein, or as  
4 provided for in a subsequent agreement between Respondent PCHI and the  
5 Commissioner. The suspension shall remain in effect until payment is made in full or  
6 until Respondent PCHI enters into an agreement satisfactory to the Commissioner to  
7 provide for payment, or until a decision providing otherwise is adopted following a  
8 hearing held pursuant to this condition.

9 4. Respondents PCHI, PIERCE, and MURPHY, jointly and severally, shall pay the  
10 Commissioner's costs, not to exceed \$4,418.90, of any audit conducted pursuant to  
11 Section 10148 of the Code to determine if Respondents have corrected the violations  
12 described in Paragraph I of the Determination of Issues, above. In calculating the  
13 amount of the Commissioner's reasonable cost, the Commissioner may use the  
14 estimated average hourly salary for all persons performing audits of real estate  
15 brokers, and shall include an allocation for travel time to and from the auditor's place  
16 of work. Respondents shall pay such cost within sixty (60) days of receiving an  
17 invoice therefore from the Commissioner detailing the activities performed during the  
18 audit and the amount of time spent performing those activities. If Respondents fail to  
19 pay such cost within the sixty (60) days, the Commissioner may indefinitely suspend  
20 all licenses and licensing rights of Respondent PCHI under the Real Estate Law until  
21 payment is made in full or until Respondent PCHI enters into an agreement  
22 satisfactory to the Commissioner to provide for payment. Upon payment in full, the  
23 indefinite suspension provided in this paragraph shall be stayed.

24 II

25 A. All licenses and licensing rights of Respondent PIERCE under the Real Estate Law are  
26 suspended until such time as Respondent PIERCE provides proof satisfactory to the  
27 Commissioner that Respondent PIERCE has, within one hundred twenty (120) days prior to

1 the effective date of the Decision herein completed the continuing education course on trust  
2 fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Code.

3 B. All licenses and licensing rights of Respondent PIERCE under the Real Estate Law are  
4 suspended for a period of sixty (60) days from the effective date of this Order; provided,  
5 however, that:

6 1. Thirty (30) days of said suspension shall be stayed for two (2) years upon the

7 following terms and conditions:

8 (a) Respondent PIERCE shall obey all laws, rules and regulations governing the  
9 rights, duties and responsibilities of a real estate licensee in the State of  
10 California; and

11 (b) That no final subsequent determination be made, after hearing or upon  
12 stipulation, that cause for disciplinary action occurred within two (2) years from  
13 the effective date of this Order. Should such a determination be made, the  
14 Commissioner may, in his discretion, vacate and set aside the stay order and  
15 reimpose all or a portion of the stayed suspension. Should no such  
16 determination be made, the stay imposed herein shall become permanent.

17 2. The remaining thirty (30) days of said 60-day suspension shall be stayed upon the  
18 condition that Respondent PIERCE petition pursuant to Section 10175.2 of the Code  
19 and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of  
20 \$50.00 for each day of the suspension for a total monetary penalty of \$1,500.00:

21 (a) Said payment shall be in the form of a cashier's check or certified check made  
22 payable to the Recovery Account of the Real Estate Fund. Said check must be  
23 delivered to the Department prior to the effective date of the Order in this  
24 matter.

25 (b) No further cause for disciplinary action against the real estate licenses of  
26 Respondent PIERCE occurs within two (2) years from the effective date of the  
27 Decision in this matter.

1 (c) If Respondent PIERCE fails to pay the monetary penalty as provided above  
2 prior to the effective date of this Order, the stay of the suspension shall be  
3 vacated as to Respondent PIERCE and the order of suspension shall be  
4 immediately executed, under this Paragraph II of this Order, in which event  
5 Respondent PIERCE shall not be entitled to any repayment nor credit, prorated  
6 or otherwise, for the money paid to the Department under the terms of this Order.

7 (d) If Respondent PIERCE pays the monetary penalty and any other moneys due  
8 under this Stipulation and Agreement in Settlement and Order and if no further  
9 cause for disciplinary action against the real estate license of Respondent  
10 PIERCE occurs within two (2) years from the effective date of this Order, the  
11 entire stay hereby granted under Paragraph II of this Order, as to Respondent  
12 PIERCE only, shall become permanent.

13 3. Pursuant to Section 10148 of the Code, Respondents PIERCE, PCHI, and MURPHY  
14 shall, jointly and severally, pay the sum of \$4,418.90 for the Commissioner's cost of  
15 the audit which led to this disciplinary action. Respondents shall pay such cost within  
16 sixty (60) days of receiving an invoice therefor from the Commissioner. The  
17 Commissioner may indefinitely suspend all licenses and licensing rights pending a  
18 hearing held in accordance with Section 11500, et seq., of the Government Code, if  
19 payment is not timely made as provided for herein, or as provided for in a subsequent  
20 agreement between Respondent PIERCE and the Commissioner. The suspension  
21 shall remain in effect until payment is made in full or until Respondent PIERCE  
22 enters into an agreement satisfactory to the Commissioner to provide for payment, or  
23 until a decision providing otherwise is adopted following a hearing held pursuant to  
24 this condition.

25 4. Respondents PIERCE, PCHI, and MURPHY, jointly and severally, shall pay the  
26 Commissioner's costs, not to exceed \$4,418.90, of any audit conducted pursuant to  
27 Section 10148 of the Code to determine if Respondents have corrected the violations



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

13 5. Respondent PIERCE shall, within six (6) months from the effective date of the  
14 Decision, take and pass the Professional Responsibility Examination administered by  
15 the Department, including the payment of the appropriate examination fee. If  
16 Respondent PIERCE fails to satisfy this condition, the Commissioner may order the  
17 suspension of the license until Respondent PIERCE passes the examination.

18 III

- 19 A. All licenses and licensing rights of Respondent MURPHY under the Real Estate Law are  
20 suspended until such time as Respondent MURPHY provides proof satisfactory to the  
21 Commissioner that Respondent MURPHY has, within one hundred twenty (120) days prior  
22 to the effective date of the Decision herein completed the continuing education course on  
23 trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the  
24 Code.
- 25 B. All licenses and licensing rights of Respondent MURPHY under the Real Estate Law are  
26 suspended for a period of sixty (60) days from the effective date of this Order; provided,  
27 however, that:

- 1           1. Thirty (30) days of said suspension shall be stayed for two (2) years upon the  
2           following terms and conditions:
- 3           (a) Respondent MURPHY shall obey all laws, rules and regulations governing the  
4           rights, duties and responsibilities of a real estate licensee in the State of  
5           California; and
- 6           (b) That no final subsequent determination be made, after hearing or upon  
7           stipulation, that cause for disciplinary action occurred within two (2) years from  
8           the effective date of this Order. Should such a determination be made, the  
9           Commissioner may, in his discretion, vacate and set aside the stay order and  
10          reimpose all or a portion of the stayed suspension. Should no such  
11          determination be made, the stay imposed herein shall become permanent.
- 12          2. The remaining thirty (30) days of said 60-day suspension shall be stayed upon the  
13          condition that Respondent MURPHY petitions pursuant to Section 10175.2 of the  
14          Code and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate  
15          of \$50.00 for each day of the suspension for a total monetary penalty of \$1,500.00:
- 16          (a) Said payment shall be in the form of a cashier's check or certified check made  
17          payable to the Recovery Account of the Real Estate Fund. Said check must be  
18          delivered to the Department prior to the effective date of the Order in this  
19          matter.
- 20          (b) No further cause for disciplinary action against the real estate licenses of  
21          Respondent MURPHY occurs within two (2) years from the effective date of  
22          the Decision in this matter.
- 23          (c) If Respondent MURPHY fails to pay the monetary penalty as provided above  
24          prior to the effective date of this Order, the stay of the suspension shall be  
25          vacated as to Respondent MURPHY and the order of suspension shall be  
26          immediately executed, under this Paragraph III of this Order, in which event  
27          Respondent MURPHY shall not be entitled to any repayment nor credit,

1                   prorated or otherwise, for the money paid to the Department under the terms of  
2                   this Order.

3                   (d) If Respondent MURPHY pays the monetary penalty and any other moneys due  
4                   under this Stipulation and Agreement in Settlement and Order and if no further  
5                   cause for disciplinary action against the real estate license of Respondent  
6                   MURPHY occurs within two (2) years from the effective date of this Order, the  
7                   entire stay hereby granted under Paragraph III of this Order, as to Respondent  
8                   MURPHY only, shall become permanent.

9                   3. Pursuant to Section 10148 of the Code, Respondents MURPHY, PCHI and PIERCE  
10                  shall, jointly and severally, pay the sum of \$4,418.90 for the Commissioner's cost of  
11                  the audit which led to this disciplinary action. Respondents shall pay such cost within  
12                  sixty (60) days of receiving an invoice therefor from the Commissioner. The  
13                  Commissioner may indefinitely suspend all licenses and licensing rights pending a  
14                  hearing held in accordance with Section 11500, et seq., of the Government Code, if  
15                  payment is not timely made as provided for herein or as provided for in a subsequent  
16                  agreement between Respondent MURPHY and the Commissioner. The suspension  
17                  shall remain in effect until payment is made in full or until Respondent MURPHY  
18                  enters into an agreement satisfactory to the Commissioner to provide for payment, or  
19                  until a decision providing otherwise is adopted following a hearing held pursuant to  
20                  this condition.

21                  4. Respondents MURPHY, PCHI and PIERCE, jointly and severally, shall pay the  
22                  Commissioner's costs, not to exceed \$4,418.90, of any audit conducted pursuant to  
23                  Section 10148 of the Code to determine if Respondents have corrected the violations  
24                  described in Paragraph I of the Determination of Issues, above. In calculating the  
25                  amount of the Commissioner's reasonable cost, the Commissioner may use the  
26                  estimated average hourly salary for all persons performing audits of real estate brokers,  
27                  and shall include an allocation for travel time to and from the auditor's place of work.

1 Respondents shall pay such cost within sixty (60) days of receiving an invoice  
2 therefore from the Commissioner detailing the activities performed during the audit  
3 and the amount of time spent performing those activities. If Respondents fail to pay  
4 such cost within the sixty (60) days, the Commissioner may indefinitely suspend all  
5 licenses and licensing rights of Respondent MURPHY under the Real Estate Law  
6 until payment is made in full or until Respondent MURPHY enters into an agreement  
7 satisfactory to the Commissioner to provide for payment. Upon payment in full, the  
8 indefinite suspension provided in this paragraph shall be stayed.

- 9 5. Respondent MURPHY shall, within six (6) months from the effective date of the  
10 Decision, take and pass the Professional Responsibility Examination administered  
11 by the Department, including the payment of the appropriate examination fee. If  
12 Respondent MURPHY fails to satisfy this condition, the Commissioner may order  
13 the suspension of the license until Respondent MURPHY passes the examination.

14 11-18-09

15 DATED

15 MARY F. CLARKE, Counsel  
16 DEPARTMENT OF REAL ESTATE

17 \* \* \*

18 We have read the Stipulation and Agreement in Settlement and Order and its  
19 terms are understood by us and are agreeable and acceptable to us. We understand that we are  
20 waiving rights given to us by the California APA (including but not limited to Sections 11506,  
21 11508, 11509, and 11513 of the Government Code), and we willingly, intelligently, and  
22 voluntarily waive those rights, including the right of requiring the Commissioner to prove the  
23 allegations in the Accusation at a hearing at which we would have the right to cross-examine  
24 witnesses against us and to present evidence in defense and mitigation of the charges.

24 PACIFIC CAPITAL HOLDINGS, INC., Respondent

25 11/9/09  
26 DATED

26 By:

26 ROBERT STEVEN PIERCE  
27 Designated Officer - Broker

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11/9/09  
DATED

  
ROBERT STEVEN PIERCE  
Respondent

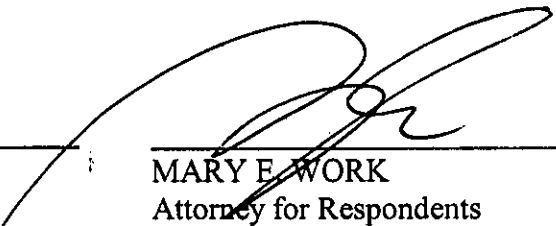
11-5-09  
DATED

  
MATTHEW PETER MURPHY  
Respondent

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

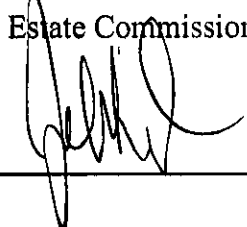
11/12/09  
DATED

  
MARY E. WORK  
Attorney for Respondents

\*\*\*

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 January 5, 2010

IT IS SO ORDERED 12-9-09

JEFF DAVI  
Real Estate Commissioner  


1 MARY F. CLARKE, Counsel (SBN 186744)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0780 (Direct)

FILED

MAY - 5 2009.

DEPARTMENT OF REAL ESTATE

By K. Contreras

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

11 \* \* \*

12	In the Matter of the Accusation of	)	
13		)	
14	PACIFIC CAPITAL HOLDINGS, INC.,	)	NO. H-10668 SF
15	a Corporation,	)	
16	ROBERT STEVEN PIERCE, and	)	<u>ACCUSATION</u>
17	MATTHEW PETER MURPHY,	)	
		)	
	Respondents.	)	

18 The Complainant, E. J. HABERER II, a Deputy Real Estate Commissioner of the  
19 State of California, for cause of Accusation against PACIFIC CAPITAL HOLDINGS, INC., a  
20 Corporation (herein "PCHI"), ROBERT STEVEN PIERCE (herein "PIERCE"), and  
21 MATTHEW PETER MURPHY (herein "MURPHY") is informed and alleges as follows:

22 1

23 The Complainant makes this Accusation in his official capacity.

24 2

25 At all times herein mentioned, Respondents PCHI, PIERCE, and MURPHY  
26 (herein "Respondents") were and now are licensed and/or have license rights under the Real  
27 Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

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At all times herein mentioned PCHI was and now is licensed by the State of California Department of Real Estate (herein "the Department") as a corporate real estate broker by and through PIERCE as designated officer-broker of PCHI to qualify said corporation and to act for said corporation as a real estate broker.

4

At all times herein mentioned, PIERCE was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of PCHI as of December 12, 2006. As said designated officer-broker, PIERCE was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of PCHI for which a license is required.

5

At all times herein mentioned, MURPHY was and now is licensed by the Department as a real estate broker, individually and was designated officer-broker of PCHI from about December 2, 2002 to about December 11, 2006. As said designated officer-broker, MURPHY was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of PCHI for which a license is required.

6

Whenever reference is made in an allegation in this Accusation to an act or omission of PCHI, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with PCHI committed such act or omission while engaged in the furtherance of the business or operations of such corporate Respondent and while acting within the course and scope of their authority and employment.

///

1  
2 At all times herein mentioned Respondents engaged in the business of, acted in  
3 the capacity of, advertised, or assumed to act as a real estate brokers for compensation, or in  
4 expectation of compensation, within the State of California within the meaning of:

5 (a) Section 10131(a) of the Code, the operation of a real estate sales brokerage,  
6 wherein Respondents sold or offered to sell, bought or offered to buy, solicited prospective  
7 sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or  
8 exchange of real property for a business opportunity; and

9 (b) Section 10131 (b) of the Code, the operation of a property management  
10 business with the public wherein Respondents leased or rented and offered to lease or rent, and  
11 placed for rent, and/or solicited listings of places for rent, and/or solicited for prospective  
12 tenants of real property or improvements thereon, and collected rents from real property or  
13 improvements thereon.

14  
15 In so acting as a real estate broker, as described in Paragraph 7, above, PCHI  
16 accepted or received funds in trust (herein "trust funds") from or on behalf of buyers, owners,  
17 tenants, borrowers, lenders and others in connection with real estate sales, leasing, renting, and  
18 collection of rents on real property or improvements thereon, and thereafter from time to time  
19 made disbursements of said funds.

20  
21 The aforesaid trust funds accepted or received by PCHI were deposited or caused  
22 to be deposited by PCHI into one or more bank accounts maintained by PCHI at the Oakland,  
23 California branch of the Wells Fargo Bank, including but not necessarily limited to "PCH, Inc  
24 dba Keller Williams Realty", account number 668-2025579 (herein "Bank #1").

25  
26 Between about September 6, 2006 and about December 31, 2007, in connection  
27 with the collection and disbursement of said trust funds, PCHI:



1 (a) failed to place trust funds entrusted to PCHI into the hands of a principal on  
2 whose behalf the funds were received, into a neutral escrow depository, or into a trust fund  
3 account in the name of PCHI as trustee at a bank or other financial institution, in conformance  
4 with the requirements of Section 10145 of the Code and Section 2832 of Title 10, the California  
5 Code of Regulations (herein the "Regulations"), in that PCHI placed such funds into Bank #1, an  
6 account that was not in the name of PCHI as trustee;

7 (b) failed to keep a columnar record in chronological sequence of all trust funds  
8 received and disbursed from Bank #1 containing all the information required by Section 2831 of  
9 the Regulations;

10 (c) failed to keep a separate record for each beneficiary or transaction,  
11 accounting therein for all funds which have been deposited into Bank #1, containing all  
12 information required by Section 2831.1 of the Regulations;

13 (d) failed to reconcile, at least once a month, the balance of all separate  
14 beneficiary or transaction records with Bank #1, as required by Section 2831.2 of the  
15 Regulations; and,

16 (e) caused, suffered, or permitted money of others which was received and held  
17 by PCHI in Bank #1 to be commingled with PCHI's own money, in violation of Section  
18 10176(e) of the Code and Section 2835 of the Regulations.

19 11

20 Between about January 1, 2007 and about December 31, 2007, in connection with  
21 PCHI's real estate brokerage activities, PCHI:

22 (a) failed to retain in its possession and make available for inspection to the  
23 Commissioner, real estate salesperson licenses for Pamela Flaggs (license #00584267), Leona  
24 Greenlow (license # 1390252), and Sherry Long (license #1251637), in violation of Section  
25 10160 of the Code and Section 2753 of the Regulations; and,

26 (b) failed to have a written agreement with real estate salesperson Teresita  
27 Monroe (license #1220607), in violation of Section 2726 of the Regulations.

At all times mentioned herein, between about December 12, 2006 and December 31, 2007, PIERCE failed to exercise reasonable supervision over the acts of PCHI and its agents and employees in such a manner as to allow the acts and omissions on the part of PCHI, described above, to occur, in violation of Sections 10159.2 and 10177(g) and (h) of the Code and Section 2725 of the Regulations.


At all times mentioned herein, between about September 6, 2006 and December 11, 2006, MURPHY failed to exercise reasonable supervision over the acts of PCHI and its agents and employees in such a manner as to allow the acts and omissions on the part of PCHI, described above, to occur in violation of Sections 10159.2 and 10177(g) and (h) of the Code and Section 2725 of the Regulations.

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents under the following provisions of the Code and/or the Regulations:

- (a) as to Paragraph 10(a) and PCHI under Section 10145 of the Code and Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;
- (b) as to Paragraph 10(b) and PCHI under Section 10145 of the Code and Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;
- (c) as to Paragraph 10(c) and PCHI under Section 10145 of the Code and Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (d) as to Paragraph 10(d) and PCHI under Section 10145 of the Code and Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;

- 1 (e) as to Paragraph 10(e) and PCHI under Section 10176(e) of the Code and  
2 2835 of the Regulations;
- 3 (f) as to Paragraph 11(a) and PCHI under Section 10160 of the Code and  
4 Section 2753 of the Regulations in conjunction with Section 10177(d) of  
5 the Code;
- 6 (g) as to Paragraph 11(b) and PCHI under Section 2726 of the Regulations in  
7 conjunction with Section 10177(d) of the Code;
- 8 (h) as to Paragraph 12 and PIERCE under Sections 10159.2, 10177(g) and (h)  
9 of the Code and Section 2725 of the Regulations; and,
- 10 (i) as to Paragraph 13 and MURPHY under Sections 10159.2, 10177(g) and (h)  
11 of the Code and Section 2725 of the Regulations.

12 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
13 of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary  
14 action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of  
15 Division 4 of the Business and Professions Code) and for such other and further relief as may be  
16 proper under other applicable provisions of law.

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18  
19   
20 \_\_\_\_\_  
21 E. J. HABERER II  
22 Deputy Real Estate Commissioner  
23

24 Dated at Oakland, California

25 this 15<sup>th</sup> day of January, 2009.  
26  
27