FLED DEPARTMENT OF REAL ESTATE P. O. Box 187007 2 Sacramento, CA 95818-7007 JAN 21 2014 3 Telephone: (916) 227-0789 BUREAU OF REAL ESTATE 4 5 6 7 8 BEFORE THE DEPARTMENT OF REAL ESTATE 9 STATE OF CALIFORNIA 10 11 In the Matter of the Accusation of 12 NO. H-11416 SF CHRISTIAN CHURCH HOMES OF 13 NORTHERN CALIFORNIA and MERRILL DEAN CLUM, 14 STIPULATION AND AGREEMENT 15 Respondents. 16 17 It is hereby stipulated by and between Respondents CHRISTIAN CHURCH 18 HOMES OF NORTHERN CALIFORNIA and MERRILL DEAN CLUM (collectively referred 19 to herein as "Respondents"), acting by and through James Diamond, Esq., Counsel for 20 Respondents, and the Complainant, acting by and through Annette E. Ferrante, Esq., Counsel for 21 the Department of Real Estate ("Department"), as follows for the purpose of settling and 22 disposing of the Accusation filed on June 25, 2012, in this matter: 23 All issues which were to be contested and all evidence which was to 1. 24 be 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.

- 2. Respondents have received, read and understand the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department in this proceeding.
- 3. Respondents filed a Notice of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents acknowledge that Respondents understand that by withdrawing said Notice of Defense, Respondents will thereby waive Respondents' right to require the Real Estate Commissioner ("Commissioner") to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that Respondents will waive other rights afforded to Respondents in connection with the hearing, such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.
- 4. This Stipulation is based on the factual allegations contained in the Accusation. In the interest of expedience and economy, Respondents choose not to contest these factual allegations, but to remain silent and understand that, as a result thereof, these factual statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set forth below. The Commissioner shall not be required to provide further evidence to prove such allegations.
- 5. This Stipulation and Respondents' decision not to contest the Accusation are made for the purpose of reaching an agreed disposition in this proceeding and are expressly limited to this proceeding and any other proceeding or case in which the Department, the state or federal government, an agency of this state, or an agency of another state is involved.
- 6. It is understood by the parties that the Commissioner may adopt the Stipulation and Agreement as his decision in this matter, thereby imposing the penalty and sanctions on Respondents' real estate licenses and license rights as set forth in the "Order"

below. In the event that the Commissioner in his discretion does not adopt the Stipulation and Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing and proceeding on the Accusation under all of the provisions of the APA and shall not be bound by any admission or waiver made herein.

- 7. The Order or any subsequent Order of the Commissioner made pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.
- 8. Respondents understand that by agreeing to this Stipulation and Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business and Professions Code ("the Code"), the costs of the audit which resulted in the determination that Respondents committed the trust fund violation(s) found in the Determination of Issues. The amount of such costs is \$7,014.00.
- 9. Respondents further understand that by agreeing to this Stipulation and Agreement, the findings set forth below in the Determination of Issues become final, and that the Commissioner may charge said Respondents for the costs of any audit conducted pursuant to Section 10148 of the Code to determine if the violations have been corrected. The maximum costs of said audit shall not exceed \$7,014.00.
- Agreement, Respondents agree to pay, pursuant to Section 10106 of the Code, the costs of the investigation and enforcement of this case which resulted in the determination that Respondents committed the violation(s) found in the Determination of Issues. The amount of such cost is \$1,790.30.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed that the following determination of issues shall be made:

The acts and omissions of Respondent CHRISTIAN CHURCH HOMES OF NORTHERN CALIFORNIA as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent CHRISTIAN CHURCH HOMES OF NORTHERN CALIFORNIA under the provisions of Section 10177(d) of the Code, in conjunction with Sections 10145 and 10146 of the Code and Sections 2831.1, 2832, and 2834 of Title 10 of the California Code of Regulations.

II.

The acts and omissions of Respondent MERRILL DEAN CLUM as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent MERRILL DEAN CLUM under the provisions of Sections 10177(g) and 10177(h) and of the Code.

ORDER

I.

All licenses and licensing rights of Respondent CHRISTIAN CHURCH HOMES
OF NORTHERN CALIFORNIA ("Respondent") under the Real Estate Law are suspended for a
period of Sixty (60) days from the effective date of this Order; provided, however, that:

- 1. Thirty (30) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:
- a. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and,
- b. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years from the effective date of this Order. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

1	2. Thirty (30) days of said suspension shall be stayed, upon the condition that		
2.	Respondent petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty		
3	pursuant to Section 10175.2 of the Code at a rate of \$50.00 for each day of the suspension for a		
4	total monetary penalty of \$1,500.00.		
5	a. Said payment shall be in the form of a cashier's check or certified		
6	check made payable to the Department of Real Estate. Said check must be delivered to the		
7	Department prior to the effective date of the Decision in this matter.		
8	b. No further cause for disciplinary action against the real estate		
9	license of Respondent occurs within two (2) years from the effective date of the decision in this		
10-	matter.		
11	c. If Respondent fails to pay the monetary penalty in accordance with		
12	the terms and conditions of the Decision, the Commissioner may, without a hearing, order the		
13	immediate execution of all or any part of the stayed suspension, in which event, Respondent		
14	shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the		
15	Department under the terms of this decision.		
16	d. If Respondent pays the monetary penalty, and if no further cause		
ا 17	for disciplinary action against the real estate license of Respondent occurs within two (2) years		
18	from the effective date of the Decision herein, then the stay hereby granted shall become		
19	permanent.		
20	II.		
21	1. All licenses and licensing rights of Respondent MERRILL DEAN		
22	CLUM ("Respondent") under the Real Estate Law are suspended for a period of Sixty (60) days		
23	from the effective date of this Order; provided, however, that:		
24	a. Thirty (30) days of said suspension shall be stayed for two (2)		
25	years upon the following terms and conditions:		
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1	i. Respondent shall obey all laws, rules and regulations		
2	governing the rights, duties and responsibilities of a real estate licensee in the State of		
3	California; and,		
4	ii. That no final subsequent determination be made, after		
5	hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years		
6	from the effective date of this Order. Should such a determination be made, the Commissioner		
7	may, in his discretion, vacate and set aside the stay order and re-impose all or a portion of the		
8	stayed suspension. Should no such determination be made, the stay imposed herein shall		
9	become permanent.		
10	b. Thirty (30) days of said suspension shall be stayed, upon the		
11	condition that Respondent petitions pursuant to Section 10175.2 of the Code and pays a		
12	monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$50.00 for each day of the		
13	suspension for a total monetary penalty of \$1,500.00.		
14	i. Said payment shall be in the form of a cashier's check or		
15	certified check made payable to the Department of Real Estate. Said check must be delivered to		
16	the Department prior to the effective date of the Decision in this matter.		
17	ii. No further cause for disciplinary action against the real		
18	estate license of Respondent occurs within two (2) years from the effective date of the decision		
9	in this matter.		
20	iii. If Respondent fails to pay the monetary penalty in		
21	accordance with the terms and conditions of the Decision, the Commissioner may, without a		
22	hearing, order the immediate execution of all or any part of the stayed suspension, in which		
23	event, Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for		
24	money paid to the Department under the terms of this decision.		
25	iv. If Respondent pays the monetary penalty, and if no further		
26	cause for disciplinary action against the real estate license of Respondent occurs within two (2)		
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years from the effective date of the Decision herein, then the stay hereby granted shall become permanent.

- 2. Respondent shall, within six (6) months from the effective date of this Order, take and pass the Professional Responsibility Examination administered by the Department, including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of all licenses and licensing rights of Respondent until he passes the examination.
- 3. Notwithstanding any other provision of this Order, all licenses and licensing rights of Respondent are suspended unless and until he provides proof satisfactory to the Commissioner that he has taken and successfully completed the continuing education course on Trust Fund Accounting and Handling specified in Section 10170.5(a)(3) of the Code. The course must have been completed no earlier than one hundred twenty (120) days prior to the effective date of this Order, and proof must be submitted prior to the effective date of this Order, to prevent suspension of Respondent's license pursuant to this condition.

III.

1. Respondents CHRISTIAN CHURCH HOMES OF NORTHERN

CALIFORNIA and MERRILL DEAN CLUM, ("Respondents") jointly and severally, shall pay the sum of \$7,014.00 for the Commissioner's cost of the audit which led to this disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner. The Commissioner may indefinitely suspend all licenses and licensing rights of Respondents pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between Respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondents enter into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

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Respondents, jointly and severally, shall pay the Commissioner's costs, 2. not to exceed \$7,014.00, of any audit conducted pursuant to Section 10148 of the Code to determine if Respondents have corrected the violations described in the Determination of Issues, above, and any other violations found in the audit which led to this disciplinary action. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondents shall pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. If Respondents fail to pay such cost within the sixty (60) days, the Commissioner may indefinitely suspend all licenses and licensing rights of Respondents under the Real Estate Law until payment is made in full or until Respondents enter into an agreement satisfactory to the Commissioner to provide for payment. Upon full payment, the indefinite suspension provided for in this paragraph shall be stayed.

IV.

All licenses and licensing rights of Respondents CHRISTIAN CHURCH HOMES OF NORTHERN CALIFORNIA and MERRILL DEAN CLUM ("Respondents") are indefinitely suspended unless or until Respondents, jointly and severally, pay the sum of \$1,790.30 for the Commissioner's reasonable cost of the investigation and enforcement which led to this disciplinary action. Said payment shall be in the form of a cashier's check or certified check made payable to the Department of Real Estate.

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Counsel for Department of Real Estate

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

DATED

James T. Diamond, Esq., Attorney for Respondents CHRISTIAN CHURCH HOMES OF NORTHERN CALIFORNIA and MERRILL DEAN CLUM

NORTHERN CALIFORNIA

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

Respondents can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by Respondents, to the Department at fax number (916) 227-9458. Respondents agree, acknowledge and understand that by electronically sending to the Department a fax copy of Respondents' actual signatures as they appear on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondents as if the Department had received the original signed Stipulation and Agreement.

DATED	MERRILL DEAN CLUM, Respondent
DATED	MERRILL DEAN.CLUM, As Designated Officer of Respondent CHRISTIAN CHURCH HOMES OF NORTHERN CALIFORNIA

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

3/15/13

Cames T. Diamond, Esq., Attorney for Respondents CHRISTIAN CHURCH HOMES OF NORTHERN CALIFORNIA and MERRILL DEAN CLUM

The foregoing Stipulation and Agreement is hereby adopted by me as my

Decision in this matter as to Respondents CHRISTIAN CHURCH HOMES OF NORTHERN

CALIFORNIA and MERRILL DEAN CLUM, and shall become effective at 12 o'clock noon on FEB | 2014

IT IS SO ORDERED

REAL ESTATE COMMISSIONER

WAYNE S/BELL