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MAY 05 2016

BUREAU OF REAL ESTATE

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9 BEFORE THE BUREAU OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12	In the Matter of the Accusation of)	BRE No. H-11889 SF
13)	
14	COLIN GRAEME MACKENZIE,)	
15	Respondent.)	<u>STIPULATION AND AGREEMENT</u> <u>IN SETTLEMENT AND ORDER</u>

16 It is hereby stipulated by and between COLIN GRAEME MACKENZIE
17 (Respondent), and his counsel, Charles R. Ostertag, and the Complainant, acting by and through
18 Richard K. Uno, Counsel for the Bureau of Real Estate; as follows for the purpose of settling
19 and disposing of the Accusation filed on October 1, 2015, in this matter:

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

25 2. Respondent has received, read, and understands the Statement to
26 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Bureau of Real
27 Estate in this proceeding.

1 3. On or about October 31, 2013, Respondent filed a Notice of Defense
2 pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on
3 the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said
4 Notice of Defense. Respondent acknowledges that he understands that by withdrawing said
5 Notice of Defense he will thereby waive his right to require the Real Estate Commissioner
6 (Commissioner) to prove the allegations in the Accusation at a contested hearing held in
7 accordance with the provisions of the APA and that he will waive other rights afforded to him in
8 connection with the hearing such as the right to present evidence in defense of the allegations in
9 the Accusation and the right to cross-examine witnesses.

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

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

21 6. The Order or any subsequent Order of the Commissioner made pursuant to
22 this Order shall not constitute an estoppel, merger, or bar to any further administrative or civil
23 proceedings by the Bureau of Real Estate Bureau)with respect to any matters which were not
24 specifically alleged to be causes for accusation in this proceeding.

25 7. Respondent understands that by agreeing to this Order, Respondent agrees
26 to pay, pursuant to Section 10106 of the Business and Professions Code (Code), the cost of the
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1 investigation and enforcement which resulted in the determination that Respondent committed
2 the violations found in the Determination of Issues. The amount of said costs is \$1,000.00.
3

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 Accusation without a hearing, it is stipulated and agreed
7 that the acts and/or omissions of Respondent, as described in the Accusation, constitute grounds
8 for the suspension or revocation of the licenses and license rights of Respondent under the
9 provisions of Section 10177(b) of the Code.

10 ORDER

11 All licenses and licensing rights of Respondent, under the Real Estate Law are
12 revoked; provided, however, a restricted real estate salesperson license shall be issued to
13 Respondent, pursuant to Section 10156.5 of the Code, if Respondent makes application
14 therefore and pays to the Bureau of Real Estate the appropriate fee for the restricted license
15 within 90 days from the effective date of this Decision. The restricted license issued to
16 Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and to the
17 following limitations, conditions, and restrictions imposed under authority of Section 10156.6 of
18 the Code:

19 1. The restricted license issued to Respondent may be suspended prior to
20 hearing by Order of the Commissioner in the event of Respondent's conviction or plea of nolo
21 contendere to a crime which is substantially related to Respondent's fitness or capacity as a real
22 estate licensee.

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

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

6 4. Respondent shall submit with any application for license under an
7 employing broker, or any application for transfer to a new employing broker, a statement signed
8 by the prospective employing real estate broker on a form approved by the Bureau which shall
9 certify:

10 (1) That the employing broker has read the Decision which is the basis
11 for the issuance of a restricted license; and

12 (2) That the employing broker will carefully review all transaction
13 documents prepared by the restricted licensee and otherwise exercise close supervision over the
14 licensee's performance of acts for which a license is required.

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

24 6. All licenses and licensing rights of Respondent are indefinitely suspended
25 unless or until Respondent pays the sum of \$1,000.00 for the Commissioner's reasonable cost of
26 the investigation and enforcement which led to this disciplinary action. Said payment shall be in
27 the form of a cashier's check made payable to the Bureau of Real Estate. The investigative and

1 enforcement costs must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box
2 137013, Sacramento, CA 95813-7013, prior to the effective date of this Decision and Order.

3 7. Respondent shall, within six (6) months from the effective date of this
4 Order, take and pass the Professional Responsibility Examination administered by the Bureau
5 including the payment of the appropriate examination fee. If Respondent fails to satisfy this
6 condition, Respondent's real estate license shall automatically be suspended until Respondent
7 passes the examination.

8 8. Respondent shall notify the Commissioner in writing within 72 hours of
9 any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post
10 Office Box 137013, Sacramento, CA 95813-7013. The letter shall set forth the date of
11 Respondent's arrest, the crime for which Respondent was arrested and the name and address of
12 the arresting law enforcement agency. Respondent's failure to timely file written notice shall
13 constitute an independent violation of the terms of the restricted license and shall be ground for
14 the suspension or revocation of that license.

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16 3/7/66

17 DATED

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16 

17 RICHARD K. UNO, Counsel III
18 BUREAU OF REAL ESTATE

19 * * *

20 I have read the Stipulation and Agreement in Settlement and Order and its terms
21 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
22 rights given to me by the California Administrative Procedure Act (including but not limited
23 to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly,
24 intelligently, and voluntarily waive those rights, including the right of requiring the
25 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
26 right to cross-examine witnesses against me and to present evidence in defense and mitigation
27

of the charges.

3-3-16
DATED


COLIN GRAEME MACKENZIE

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

March 3, 2016
DATED


CHARLES R. OSTERTAG
Attorney for Respondent

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 JUN 14 2016.

IT IS SO ORDERED MAY 2, 2016.

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: JEFFREY MASON
Chief Deputy Commissioner