

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

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**FILED**

JUN 20 2016

BUREAU OF REAL ESTATE

By B. Nicholas

8 BEFORE THE BUREAU OF REAL ESTATE  
9 STATE OF CALIFORNIA  
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11 In the Matter of the Accusation of )

NO. H-11914 SF

12 PROPERTY UPSURGE INC. )  
13 and ERIC ROBERT HUBER, )

STIPULATION AND AGREEMENT

14 Respondents. )  
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16 It is hereby stipulated by and between Respondents PROPERTY UPSURGE INC.  
17 and ERIC ROBERT HUBER, (collectively "Respondents") acting by and through their attorney  
18 Adam G. Slote, and the Complainant, acting by and through Annette E. Ferrante, Counsel for the  
19 Bureau of Real Estate ("Bureau"), as follows for the purpose of settling and disposing of the  
20 Accusation filed on December 15, 2015, 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 Accusation, which  
23 hearing was to be held in accordance with the provisions of the Administrative Procedure Act  
24 ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions  
25 of this Stipulation and Agreement ("Stipulation").  
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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 Accusation filed by the Bureau in  
3 this proceeding.

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

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

19                  5.       This Stipulation and Respondents' decision not to contest the Accusation  
20 are made for the purpose of reaching an agreed disposition in this proceeding and are expressly  
21 limited to this proceeding and any other proceeding or case in which the Bureau, the state or  
22 federal government, an agency of this state, or an agency of another state is involved.

23                  6.       It is understood by the parties that the Commissioner may adopt this  
24 Stipulation as his decision in this matter, thereby imposing the penalty and sanctions on  
25 Respondents' real estate licenses and license rights as set forth in the Order below. In the event  
26 that the Commissioner in his discretion does not adopt this Stipulation, it shall

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1 be void and of no effect, and Respondents shall retain the right to a hearing and proceeding on  
2 the Accusation under all of the provisions of the APA and shall not be bound by any admission  
3 or waiver made herein.

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

8                 8.       Respondents understand that by agreeing to this Stipulation,  
9 Respondents agree to pay, pursuant to Section 10148 of the California Business and  
10 Professions Code ("the Code"), the cost of the audit which resulted in the determination that  
11 Respondents committed the trust fund violation(s) found in the Determination of Issues. The  
12 amount of such cost is \$4,659.90.

13                9.       Respondents further understand that by agreeing to this Stipulation, the  
14 findings set forth below in the Determination of Issues become final, and that the  
15 Commissioner may charge said Respondents for the cost of any audit conducted pursuant to  
16 Section 10148 of the Code to determine if the violations have been corrected. The maximum  
17 cost of said audit shall not exceed \$5,242.39.

18                10.      Respondents understand that by agreeing to this Stipulation, Respondents  
19 agree to pay, pursuant to Section 10106 of the Code, the cost of the investigation and  
20 prosecution of this case which resulted in the determination that Respondents committed the  
21 violation(s) found in the Determination of Issues. The amount of such cost is \$1,470.00.

22                                 DETERMINATION OF ISSUES

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

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1 The acts and omissions of Respondents PROPERTY UPSURGE INC. and  
2 ERIC ROBERT HUBER as described in the Accusation, are grounds for the suspension or  
3 revocation of the licenses and license rights of said Respondents under the provisions of  
4 Section and 10177(g) of the Code, in conjunction with Section 10145 of the Code and Sections  
5 2832.1, 2832, 2834, and 2726 of Title 10 of the California Code of Regulations.

6 ORDER

7 1. All licenses and licensing rights of Respondents PROPERTY  
8 UPSURGE INC. and ERIC ROBERT HUBER ("Respondents") under the Real Estate Law are  
9 suspended for a period of sixty (60) days from the effective date of this Decision and Order;  
10 provided, however, that all sixty (60) days of said suspension shall be stayed for two (2) years  
11 upon the following terms and conditions:

12 . a. Respondents shall obey all laws, rules and regulations governing  
13 the rights, duties and responsibilities of a real estate licensee in the State of California; and,  
14 b. That no final subsequent determination be made, after hearing or  
15 upon stipulation, that cause for disciplinary action occurred within two (2) years from the  
16 effective date of this Decision and Order. Should such a determination be made, the  
17 Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a  
18 portion of the stayed suspension. Should no such determination be made, the stay imposed  
19 herein shall become permanent.

20 2. All licenses and licensing rights of Respondent HUBER are indefinitely  
21 suspended unless or until Respondent HUBER provides proof satisfactory to the  
22 Commissioner, of having taken and successfully completed the continuing education course on  
23 trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section  
24 10170.5 of the Code. Proof of satisfaction of this requirement includes evidence that  
25 Respondent HUBER has successfully completed the trust fund accounting and handling  
26 continuing education course, no earlier than 120 days prior to the effective date of the Decision

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1 and Order in this matter. **Proof of completion of the trust fund accounting and handling**  
2 **course must be delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013,**  
3 **Sacramento, CA 95813-7013, prior to the effective date of this Decision and Order.**

4 3. Pursuant to Section 10148 of the Code, Respondents shall jointly and  
5 severally pay the sum of \$4,659.90 for the Commissioner's cost of the audit which led to this  
6 disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an  
7 invoice therefore from the Commissioner. Payment of audit costs should not be made until  
8 Respondents receive the invoice. If Respondents fail to satisfy this condition in a timely  
9 manner as provided for herein, Respondents' real estate licenses shall automatically be  
10 suspended until payment is made in full, or until a decision providing otherwise is adopted  
11 following a hearing held pursuant to this condition.

12 2. Pursuant to Section 10148 of the Code, Respondents shall jointly and  
13 severally pay the Commissioner's reasonable cost, not to exceed \$5,242.39, for an audit to  
14 determine if Respondents have corrected the violation(s) found in the Determination of Issues.  
15 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the  
16 estimated average hourly salary for all persons performing audits of real estate brokers, and shall  
17 include an allocation for travel time to and from the auditor's place of work. Respondents shall  
18 pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.  
19 Payment of the audit costs should not be made until Respondents receive the invoice. If  
20 Respondents fail to satisfy this condition in a timely manner as provided for herein,  
21 Respondents' real estate licenses shall automatically be suspended until payment is made in full,  
22 or until a decision providing otherwise is adopted following a hearing held pursuant to this  
23 condition.

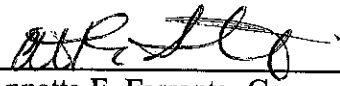
24 3. All licenses and licensing rights of Respondents are indefinitely suspended  
25 unless or until Respondents jointly and severally pay the sum of \$1,470.00 for the  
26 Commissioner's reasonable cost of the investigation and enforcement of this disciplinary action.

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1 Said payment shall be in the form of a cashier's check made payable to the Bureau of Real  
2 Estate. **The enforcement costs must be delivered to the Bureau of Real Estate, Flag Section**  
3 **at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Decision**  
4 **and Order.**

5 5/10/16

6 DATED

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8 Annette E. Ferrante, Counsel  
9 Bureau of Real Estate  
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2 I have read this Stipulation and its terms are understood by me and are  
3 agreeable and acceptable to me. I understand that I am waiving rights given to me by the  
4 California Administrative Procedure Act (including but not limited to Sections 11506, 11508,  
5 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily  
6 waive those rights, including the right of requiring the Commissioner to prove the allegations  
7 in the Accusation at a hearing at which I would have the right to cross-examine witnesses  
8 against me and to present evidence in defense and mitigation of the charges. Respondents can  
9 signify acceptance and approval of the terms and conditions of this Stipulation by faxing a  
10 copy of the signature page, as actually signed by Respondents, to the Bureau at fax number  
11 (916) 263-3767. Respondents agree, acknowledge and understand that by electronically  
12 sending to the Bureau a fax copy of Respondents' actual signatures as they appear on this  
13 Stipulation, that receipt of the faxed copy by the Bureau shall be as binding on Respondents as  
14 if the Bureau had received the original signed Stipulation.

15  
16 5/10/2016

17 DATED

18 PROPERTY UPSURGE INC. Respondent  
19 By Eric Robert Huber, Designated Officer

20 5/10/2016

21 DATED

22 ERIC ROBERT HUBER, Respondent

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

26 May 10, 2016

27 DATED

Adam G.  
Slote

Adam G. Slote,  
Attorney for Respondents

Digitally signed by Adam G. Slote  
DN: cn=Adam G. Slote, c=US,  
o=Slote, Links and Boreman,  
LLP, email=adam@slotelaw.com  
Date: 2016.05.10 09:47:58 -  
0700'

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The foregoing Stipulation and Agreement and Order is hereby adopted by me as  
my Decision in this matter as to Respondents PROPERTY UPSURGE INC. and ERIC  
ROBERT HUBER, and shall become effective at 12 o'clock noon on  
JUL 11 2016.

IT IS SO ORDERED

June 16, 2015.

WAYNE S. BELL

REAL ESTATE COMMISSIONER

By: JEFFREY MASON  
Chief Deputy Commissioner