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1 3. On October 4, 2021, a Notice of Defense was received from all Respondents 2 pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on 3 the allegations made in the Accusation. Respondents hereby freely and voluntarily withdraw 4 said Notices of Defense. Respondents acknowledge that they understand that by withdrawing 5 said Notices of Defense they will thereby waive their rights to require the Commissioner to 6 prove the allegations in the Accusation at a contested hearing held in accordance with the 7 provisions of the APA and that they will waive other rights afforded to them in connection 8 with the hearing such as the right to present evidence in defense of the allegations in the 9 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 expediency and economy, Respondents chooses 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 Agreement is made for the purpose of reaching an
agreed disposition of this proceeding and is expressly limited to this proceeding and any other
proceeding or case in which the Department, the state or federal government, any agency of
this state, or an agency of another state is involved.

6. It is understood by the parties that the Real Estate Commissioner may adopt
the Stipulation and Agreement as his Decision in this matter, thereby imposing the penalties
and sanctions on Respondents' real estate licenses and license rights as set forth in the below
"Order." 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 the provisions of the APA and shall not be
bound by any admission or waiver made herein.

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7. The Order or any subsequent Order of the Real Estate 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 of Real Estate with respect
 to any matters which were not specifically alleged to be causes for accusation in this
 proceeding.

## DETERMINATION OF ISSUES

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

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The acts and/or omissions of EMJ, as described in the Accusation, are grounds
 for the suspension or revocation of the licenses and license rights of EMJ under the provisions of
 Sections 10177(d) and 10177(g) of the Code, and Section 2731 of Title 10, California Code of
 Regulations ("Regulations").

The acts and/or omissions of SCHMITT, as described in the Accusation, are
 grounds for the suspension or revocation of the licenses and license rights of SCHMITT under
 the provisions of Sections 10159.2, 10177(d), 10177(g), and 10177(h) of the Code, and Sections
 2725 and 2731 of the Regulations.

## <u>ORDER</u>

## I. As to EMJ

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

Fifteen (15) days of said suspension shall be stayed, upon the condition that

EMJ petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to
Section 10175.2 of the Code at a rate of \$100 for each day of the suspension for a total monetary
penalty of \$1,500.

 a) Said payment shall be in the form of a cashier's check made payable to the Department of Real Estate. Said check must be delivered to the Department of

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1		Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013,
2		prior to the effective date of this Order.
3	b)	No further cause for disciplinary action against the real estate license of EMJ
4		occurs within two (2) years from the effective date of the decision in this
5		matter.
6	c)	If EMJ fails to pay the monetary penalty as provided above prior to the
7		effective date of this Order, the stay of the suspension shall be vacated as to
8		EMJ and the order of suspension shall be immediately executed, under this
9		Order, in which event EMJ shall not be entitled to any repayment nor credit,
10		prorated or otherwise, for the money paid to the Department under the terms
11		of this Order.
12	d)	If EMJ pays the monetary penalty and any other moneys due under this
13		Stipulation and if no further cause for disciplinary action against the real
14		estate license of EMJ occurs within two (2) years from the effective date of
15		this Order, the entire stay hereby granted in this Order shall become
16		permanent.
17	2.	Forty-five (45) days of said suspension shall be stayed for two (2) years upon
18	the following terms and conditions:	
19	a)	EMJ shall obey all laws, rules and regulations governing the rights, duties and
20		responsibilities of a real estate licensee in the State of California; and,
21	b)	That no final subsequent determination be made, after hearing or upon
22		stipulation that cause for disciplinary action occurred within two (2) years
23		from the effective date of this Order. Should such a determination be made,
24		the Commissioner may, in his discretion, vacate and set aside the stay order
25		and re-impose all or a portion of the stayed suspension. Should no such
26		determination be made, the stay imposed herein shall become permanent.
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1	3. All licenses and licensing rights of EMJ, are indefinitely suspended unless or			
2	until EMJ, jointly and severally with SCHMITT, pay the sum of \$3,731.25 for the			
3	Commissioner's reasonable cost of the investigation and enforcement which led to this			
4	disciplinary action. Said payment shall be in the form of a cashier's check or certified check			
5	made payable to the Department of Real Estate. The investigative and enforcement costs must be			
6	delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA			
7	95813-7013, prior to the effective date of this Order.			
8	II. As to SCHMITT			
9	All licenses and licensing rights of SCHMITT, under the Real Estate Law are			
10	suspended for a period of sixty (60) days from the effective date of this Order; provided,			
11	however, that:			
12	1. Fifteen (15) days of said suspension shall be stayed, upon the condition that			
13	SCHMITT petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty			
14	pursuant to Section 10175.2 of the Code at a rate of \$100 for each day of the suspension for a			
15	total monetary penalty of \$1,500.			
16	a) Said payment shall be in the form of a cashier's check made payable to the			
17	Department of Real Estate. Said check must be delivered to the Department			
18	of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-			
19	7013, prior to the effective date of this Order.			
20	b) No further cause for disciplinary action against the real estate license of			
21	SCHMITT occurs within two (2) years from the effective date of the decision			
22	in this matter.			
23	c) If SCHMITT fails to pay the monetary penalty as provided above prior to the			
24	effective date of this Order, the stay of the suspension shall be vacated as to			
25	SCHMITT and the order of suspension shall be immediately executed, under			
26	this Order, in which event SCHMITT shall not be entitled to any repayment			
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ā: 1	nor credit, prorated or otherwise, for the money paid to the Department under
2	the terms of this Order.
3	d) If SCHMITT pays the monetary penalty and any other moneys due under this
4	Stipulation and if no further cause for disciplinary action against the real
5	estate license of SCHMITT occurs within two (2) years from the effective
6	date of this Order, the entire stay hereby granted in this Order shall become
7	permanent.
8	2. Forty-five (45) days of said suspension shall be stayed for two (2) years upon
9	the following terms and conditions:
10	a) SCHMITT shall obey all laws, rules and regulations governing the rights,
11	duties and responsibilities of a real estate licensee in the State of California;
12	and
13	b) That no final subsequent determination be made, after hearing or upon
14	stipulation that cause for disciplinary action occurred within two (2) years
15	from the effective date of this Order. Should such a determination be made,
16	the Commissioner may, in his discretion, vacate and set aside the stay order
17	and re-impose all or a portion of the stayed suspension. Should no such
18	determination be made, the stay imposed herein shall become permanent.
19	3. SCHMITT shall, within six (6) months from the effective date of this Order,
20	take and pass the Professional Responsibility Examination administered by the Department,
21	including the payment of the appropriate examination fee. If SCHMITT fails to satisfy this
22	condition, SCHMITT's real estate license shall automatically be suspended until SCHMITT
23	passes the examination.
24	4. All licenses and licensing rights of SCHMITT, are indefinitely suspended
25	unless or until SCHMITT, jointly and severally with EMJ, pay the sum of \$3,731.25 for the
26	Commissioner's reasonable cost of the investigation and enforcement which led to this
27	disciplinary action. Said payment shall be in the form of a cashier's check or certified check
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з - ц. made payable to the Department of Real Estate. The investigative and enforcement costs must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Order.

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ADRIANA Z. BADILAS, Counsel Department of Real Estate

I have read the Stipulation and Agreement and its terms are understood by me 10 11 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by 12 the California Administrative Procedure Act (including but not limited to Sections 11506, 13 11508, 11509 and 11513 of the Government Code), and I willingly, intelligently, and 14 voluntarily waive those rights, including the right of requiring the Commissioner to prove the 15 allegations in the Second Amended 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 16 17 charges.

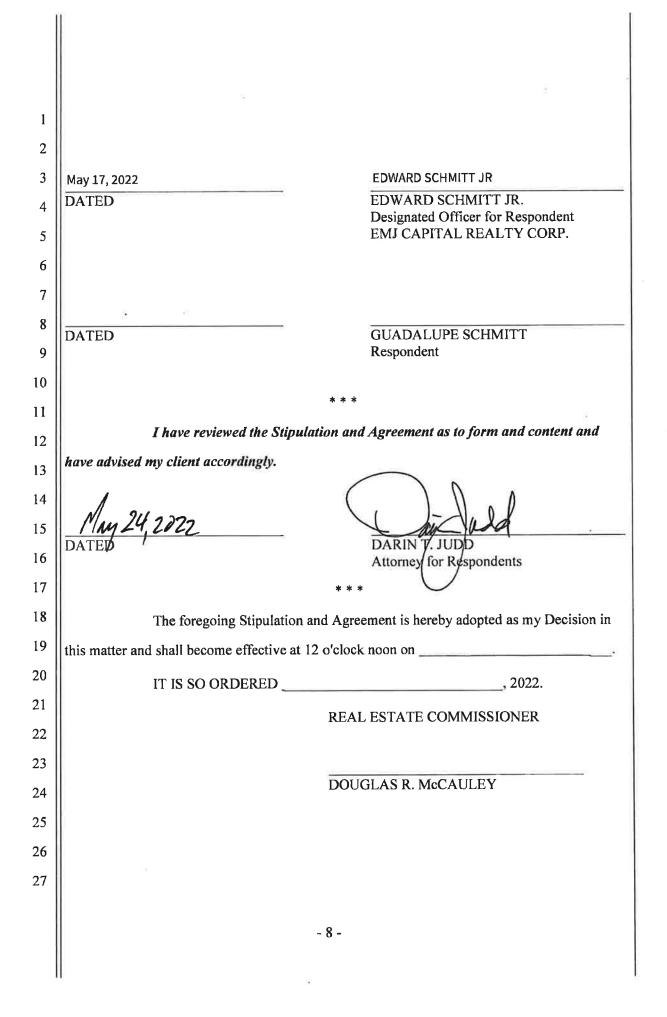
18Respondents and Respondents' attorney further agree to send the original signed19Stipulation and Agreement by mail to the following address no later than one (1) week from the20date the Stipulation and Agreement is signed by Respondents and Respondents' attorney:

Department of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 958137007.

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

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Signature: JR (May 17, 2022 12:51 PDT)

Email: eddyceo@emjcapital.com

Email: guadalupe.schmitt@yahoo.com

Signature: Cudus

Email: guadalupe.schmitt@yahoo.com

May 24: 2022 14:15 PDT;

Signature: Mu - 24, 1072 14 16 PDT

Email: eddyceo@emjcapital.com

1 2 3 EDWARD SCHMITT JR DATED 4 Designated Officer for Respondent EMJ CAPITAL REALTY CORP. 5 6 7 May 24, 2022 Guadalupe Schmitt 8 **GUADALUPE SCHMITT** DATED 9 Respondent 10 \* \* \* 11 I have reviewed the Stipulation and Agreement as to form and content and 12 have advised my client accordingly. 13 14 15 DATED DARIN T. JUDD 16 Attorney for Respondents 17 18 The foregoing Stipulation and Agreement is hereby adopted as my Decision in AUG 2 3 2022 19 this matter and shall become effective at 12 o'clock noon on \_\_\_\_\_ IT IS SO ORDERED 7.8.22 20 , 2022. 21 REAL ESTATE COMMISSIONER 22 K. megle 23 DOUGLAS R. MCCAULEY 24 25 26 27 - 8 -