

1 ELLIOTT MAC LENNAN, SBN 66674  
2 Department of Real Estate  
3 320 West 4th Street, Ste. 350  
4 Los Angeles, California 90013-1105  
5 Telephone: (213) 576-6911 (direct)  
6 -or- (213) 576-6982 (office)

FILED  
MAY 25 2008  
DEPARTMENT OF REAL ESTATE  
By K. Schneider

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

11 \* \* \*  
12 In the Matter of the Accusation of ) No. H-32072 LA  
13 SAUDER REAL ESTATE INC.; and )  
14 NANJI JO SAUDER, individually ) STIPULATION  
15 and as designated officer of ) AND  
16 Sauder Real Estate Inc. ) AGREEMENT  
17 Respondents, )  
18 )

19 It is hereby stipulated by and between Respondents  
20 SAUDER REAL ESTATE, INC. a corporate real estate broker, and  
21 NANCI JO SAUDER aka Nanci Jo Sauder-Ruest, individually and as  
22 designated officer of Sauder Real Estate Inc. (sometimes  
23 collectively referred to as "Respondents"), represented by  
24 Douglas Weeks, Esq. and the Complainant, acting by and through  
25 Elliott Mac Lennan, Counsel for the Department of Real Estate, as  
26 follows for the purpose of settling and disposing of the  
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1 Accusation ("Accusation") filed on July 14, 2005, in this matter:

2 1. All issues which were to be contested and all  
3 evidence which was to be presented by Complainant and Respondents  
4 at a formal hearing on the Accusation, which hearing was to be  
5 held in accordance with the provisions of the Administrative  
6 Procedure Act ("APA"), shall instead and in place thereof be  
7 submitted solely on the basis of the provisions of this  
8 Stipulation and Agreement ("Stipulation").

9 2. Respondents have received, read and understand the  
10 Statement to Respondent, the Discovery Provisions of the APA and  
11 the Accusation filed by the Department of Real Estate in this  
12 proceeding.

13 3. Respondents timely filed a Notice of Defense  
14 pursuant to Section 11506 of the Government Code for the purpose  
15 of requesting a hearing on the allegations in the Accusation.  
16 Respondents hereby freely and voluntarily withdraw said Notice of  
17 Defense. Respondents acknowledge that they understand that by  
18 withdrawing said Notice of Defense they thereby waive their right  
19 to require the Commissioner to prove the allegations in the  
20 Accusation at a contested hearing held in accordance with the  
21 provisions of the APA and that they will waive other rights  
22 afforded to them in connection with the hearing such as the right  
23 to present evidence in their defense the right to cross-examine  
24 witnesses.  
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1           4. This Stipulation is based on the factual  
2 allegations contained in the Accusation. In the interest of  
3 expedience and economy, Respondents choose not to contest these  
4 allegations, but to remain silent and understand that, as a  
5 result thereof, these factual allegations, without being admitted  
6 or denied, will serve as a prima facie basis for the disciplinary  
7 action stipulated to herein. The Real Estate Commissioner shall  
8 not be required to provide further evidence to prove said factual  
9 allegations.

10           5. This Stipulation and Respondents' decision not to  
11 contest the Accusation is made for the purpose of reaching an  
12 agreed disposition of this proceeding and is expressly limited to  
13 this proceeding and any other proceeding or case in which the  
14 Department of Real Estate ("Department"), the state or federal  
15 government, or any agency of this state, another state or federal  
16 government is involved.

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

1 herein.

2 7. The Order or any subsequent Order of the Real  
3 Estate Commissioner made pursuant to this Stipulation shall not  
4 constitute an estoppel, merger or bar to any further  
5 administrative or civil proceedings by the Department of Real  
6 Estate with respect to any matters which were not specifically  
7 alleged to be causes for Accusation in this proceeding but do  
8 constitute a bar, estoppel and merger as to any allegations  
9 actually contained in the Accusations against Respondents herein.

10 8. Respondents understand that by agreeing to this  
11 Stipulation, Respondents agree to pay, pursuant to Business and  
12 Professions Code Section 10148, the cost of audit which led to  
13 this disciplinary action. The amount of said cost for the audit  
14 is \$4,815.62.

15 9. Respondents have received, read, and understand the  
16 "Notice Concerning Costs of Subsequent Audit". Respondents  
17 further understand that by agreeing to this Stipulation, the  
18 findings set forth below in the Determination of Issues become  
19 final, and the Commissioner may charge Respondents for the cost  
20 of any subsequent audit conducted pursuant to Business and  
21 Professions Code Section 10148 to determine if the violations  
22 have been corrected. The maximum cost of the subsequent audit  
23 will not exceed \$4,815.62.

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DETERMINATION OF ISSUES

1  
2 By reason of the foregoing, it is stipulated and agreed  
3 that the following determination of issues shall be made:

4 I.

5 The conduct, acts or omissions of SAUDER REAL ESTATE  
6 INC., as described in Paragraph 4, above, is in violation of  
7 Sections 10145 and 10159.5 of the Business and Professions Code  
8 ("Code") and Sections 2731, 2831, 2831.2, 2832(e), 2832.1, 2834  
9 and 2950(d) of Title 10, Chapter 6 of the California Code of  
10 Regulations ("Regulations") and is a basis for the suspension or  
11 revocation of Respondent's license and license rights as a  
12 violation of the Real Estate Law pursuant to Code Sections  
13 10177(d) and 10177(g).

14 II.

15 The conduct, acts or omissions of NANCI JO SAUDER, as  
16 described in Paragraph 4, constitutes a failure to keep Sauder  
17 Real Estate Inc. in compliance with the Real Estate Law during  
18 the time that he was the officer designated by a corporate broker  
19 licensee in violation of Section 10159.2 of the Code. This  
20 conduct is a basis for the suspension or revocation of  
21 Respondent's license pursuant to Code Section 10177(h).

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All licenses and licensing rights of Respondents

SAUDER REAL ESTATE INC. and Nanci Jo Sauder under the Real Estate Law are suspended for a period of one hundred eighty (180) days from the effective date of this Decision; provided, however, that if Respondents request, the initial thirty (30) days of said suspension (or a portion thereof) shall be stayed upon condition that:

A 1. Respondents each pay a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code of \$2,000 (at the rate of \$133.33 per day for each day of the suspension) for a total monetary penalty of \$4,000.

2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.

3. No further cause for disciplinary action against the real estate licenses of Respondents occurs within two (2) years from the effective date of the Decision in this matter.

4. If Respondents fail to pay the monetary penalty in accordance with the terms of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any

1 part of the stayed suspension, in which event the Respondents  
2 shall not be entitled to any repayment nor credit, prorated or  
3 otherwise, for money paid to the Department under the terms of  
4 this Decision.

5 5. If Respondents pay the monetary penalty and if no  
6 further cause for disciplinary action against the real estate  
7 license of Respondent occurs within two (2) years from the  
8 effective date of the Decision, the stay hereby granted shall  
9 become permanent

10 B. The remaining one hundred fifty (150) days of the  
11 ninety (90) day suspension shall be stayed for two (2) years upon  
12 the following terms and conditions:

13 (a) Respondents shall obey all laws, rules and  
14 regulations governing the rights, duties and responsibilities of  
15 a real estate licensee in the State of California; and  
16

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

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III.

Pursuant to Section 10148 of the Business and Professions Code, Respondents SAUDER REAL ESTATE INC. and NANJI JO shall pay the Commissioner's reasonable cost for (a) the audit which led to this disciplinary action (b) a subsequent audit to determine if Respondents are now in compliance with the Real Estate Law. The cost of the audit which led to this disciplinary action is \$4,815.62. 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. Said amount for the prior and subsequent audits shall not exceed \$9,631.24.

Respondents shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities.

The Commissioner may suspend the license 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 the Respondent 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



1 adopted following a hearing held pursuant to this condition.

2 IV.

3 Respondent Nanci Jo Sauder shall, within nine (9)  
4 months from the effective date of this Decision, present evidence  
5 satisfactory to the Real Estate Commissioner that Respondent has,  
6 since the most recent issuance of an original or renewal real  
7 estate license, taken and successfully completed the continuing  
8 education requirements of Article 2.5 of Chapter 3 of the Real  
9 Estate Law for renewal of a real estate license. If Respondent  
10 fails to satisfy this condition, the Commissioner may order the  
11 suspension of his license until the Respondent presents such  
12 evidence. The Commissioner shall afford Respondent the  
13 opportunity for a hearing pursuant to the Administrative  
14 Procedure Act to present such evidence.

15 IV.

16 Respondent Nanci Jo Sauder shall within six (6) months  
17 from the effective date of the Decision herein, take and pass the  
18 Professional Responsibility Examination administered by the  
19 Department including the payment of the appropriate examination  
20 fee. If Respondent fails to satisfy this condition, the  
21 Commissioner may order suspension of Respondent's license until  
22 Respondent passes the examination.

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V.

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2           All licenses and licensing rights of Respondent NANCI  
3 JO SAUDER are indefinitely suspended unless or until Respondent  
4 provides proof satisfactory to the Commissioner, of having taken  
5 and successfully completed the continuing education course on  
6 trust fund accounting and handling specified in paragraph (3) of  
7 subdivision (a) of Section 10170.5 of the Business and  
8 Professions Code. Proof of satisfaction of this requirement  
9 includes evidence that respondent has successfully completed the  
10 trust fund account and handling continuing education course  
11 within 120 days prior to the effective date of the Decision in  
12 this matter.

13  
14  
15 DATED: 02-14-04

ELI  
ELLIOTT MAC LENNAN, Counsel for  
the Department of Real Estate

17 \* \* \*

18 EXECUTION OF THE STIPULATION

19           We have read the Stipulation and discussed it with our  
20 counsel. Its terms are understood by us and are agreeable and  
21 acceptable to us. We understand that we are waiving rights given  
22 to us by the California Administrative Procedure Act (including  
23 but not limited to Sections 11506, 11508, 11509 and 11513 of the  
24 Government Code), and we willingly, intelligently and voluntarily  
25 waive those rights, including the right of requiring the  
26 Commissioner to prove the allegations in the Accusation at a  
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1 hearing at which we would have the right to cross-examine  
2 witnesses against us and to present evidence in defense and  
3 mitigation of the charges.

4 Respondents can signify acceptance and approval of the  
5 terms and conditions of this Stipulation by faxing a copy of its  
6 signature page, as actually signed by Respondents, to the  
7 Department at the following telephone/fax number: Elliott Mac  
8 Lennan at (213) 576-6917. Respondents agree, acknowledge and  
9 understand that by electronically sending to the Department a fax  
10 copy of Respondents' actual signature as they appear on the  
11 Stipulation, that receipt of the faxed copy by the Department  
12 shall be as binding on Respondents as if the Department had  
13 received the original signed Stipulation.  
14

15  
16  
17 DATED: 3/16/06

Nanci Jo Sauder D.O.

SAUDER REAL ESTATE INC., a  
corporate real estate broker,  
BY: NANCI JO SAUDER, D.O.,  
Respondent

18  
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20  
21 DATED: 3/16/06

Nanci Jo Sauder

NANCI JO SAUDER individually and as  
designated officer of Sauder Real  
Estate Inc., Respondent

22  
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24  
25 DATED: 3-20-06

Douglas Weeks  
DOUGLAS WEEKS, Esq.,  
Attorney for Respondents

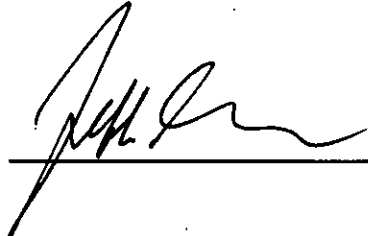
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The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondents SAUDER REAL ESTATE INC. and NANCI JO SAUDER, individually and as designated officer of Sauder Real Estate Inc. and shall become effective at 12 o'clock noon on JUN 26, 2006.

IT IS SO ORDERED S-17, 2006.

JEFF DAVI  
Real Estate Commissioner

  
\_\_\_\_\_

*Sauder  
JWS*

1 ELLIOTT MAC LENNAN, Counsel  
State Bar No. 66674  
2 Department of Real Estate  
320 West Fourth Street, Suite 350  
3 Los Angeles, California 90013-1105  
4 (213) 576-6911

**FILED**  
JUL 14 2005  
DEPARTMENT OF REAL ESTATE

By *K. Wadell*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

11 In the Matter of the Accusation of ) H-32072 LA  
12 )  
13 SAUDER REAL ESTATE, INC., and, )  
14 NANJI JO SAUDER individually ) A C C U S A T I O N  
and as designated officer of )  
15 Sauder Real Estate Inc., )  
16 Respondents. )

17 The Complainant, Janice Wadell, a Deputy Real Estate  
18 Commissioner of the State of California, for cause of Accusation  
19 against SAUDER REAL ESTATE INC., and NANCI JO SAUDER,  
20 individually and as designated officer of Sauder Real Estate  
21 Inc., is informed and alleges as follows:

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1. .

The Complainant, Janice Wadell, a Deputy Real Estate Commissioner of the State of California makes this Accusation in her official capacity.

2. .

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

3. .

SAUDER REAL ESTATE INC., (hereinafter "SREI") and NANJI JO SAUDER, individually and as designated officer of Sauder Real Estate Inc., (hereinafter "SAUDER") (sometimes hereinafter collectively referred to as Respondents) are presently licensed or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter "Code").

4. .

At all times material herein, SREI was licensed by the Department of Real Estate of the State of California (hereinafter "Department") as a corporate real estate broker by and through SAUDER, as the designated officer and broker responsible, pursuant to Code Section 10159.2 of the Business and Professions Code for supervising the activities requiring a

1 real estate license conducted on behalf SREI by SREI's officers,  
2 agents and employees.

3 SREI was originally licensed on January 31, 1995.  
4 SAUDER was originally licensed as a real estate broker on  
5 October 30, 1991, and as designated officer of SREI on January  
6 31, 1995.

7 5.

8 All further references to "Respondents", unless  
9 otherwise specified, includes the parties identified in  
10 Paragraphs 3 and 4, above, and also includes the officers,  
11 directors, managers, employees, agents and/or real estate  
12 licensees employed by or associated with said parties, who at  
13 all times material herein were engaged in the furtherance of the  
14 business or operations of said parties and who were acting  
15 within the course and scope of their authority, agency, or  
16 employment.  
17

18 6.

19 At all times material herein, Respondent SREI engaged  
20 in the business as a real estate broker as follows:

21 A. Code Section 10131(a) of the Code in that SREI  
22 operated a residential property resale brokerage;

23 B. Conducted broker-controlled escrows as an escrow  
24 holder, servicer and/or agent, through its escrow division, West  
25 Foothill Escrow, under the exemption set forth in California  
26 Financial Code Section 17006(a)(4) for real estate brokers  
27

1 performing escrows incidental to a real estate transaction where  
2 the broker is a party and where the broker is performing acts  
3 for which a real estate license is required.

4 7:

5 On December 16, 2003, the Department completed an  
6 audit examination of the books and records of SREI pertaining to  
7 its residential resale property and broker-escrow activities,  
8 requiring a real estate license as described in Paragraph 4.  
9 The audit examination covered a period of time beginning January  
10 1, 2003 to October 31, 2003. The audit examination revealed  
11 violations of the Code and the Regulations as set forth below,  
12 and more fully discussed in Audit Report LA 030216 and the  
13 exhibits and workpapers attached to said audit report.

14 8.

15 At all times material herein, in connection with the  
16 activities described in Paragraph 6, above, Respondents SREI and  
17 SAUDER accepted or received funds including funds in trust  
18 (hereinafter "trust funds") from or on behalf of actual or  
19 prospective parties to transactions handled by Respondents SREI  
20 and SAUDER and thereafter made deposits and or disbursements of  
21 such funds. From time to time herein mentioned during the audit  
22 period, said trust funds were deposited and/or maintained by  
23 Respondents SREI and SAUDER in the bank account as follows:  
24

25 "Sauder, Nanci dba West Foothill Escrow Trust Account"  
26 Account No. 20019646" ("escrow trust account")  
27 Rancho Bank  
Upland, California



In the course of activities described in Paragraphs 6, 7 and 8, above, and during the examination period described in Paragraph 7, Respondents SREI and SAUDER, acted in violation of the Code and the Regulations in that:

(a) as of October 31, 2003, the escrow trust account had a shortage in the amount of approximately \$14,331.24. Respondents SREI and SAUDER caused, permitted and/or allowed, the withdrawal or disbursement of trust funds from the escrow trust account, thereby reducing the balance of funds in the account to an amount less than the aggregate trust fund liability of the broker to all owners of the trust funds without prior written consent of every principal who then was an owner of funds in the account, in violation of Code Section 10145 and Regulations 2832.1, 2950(d), 2950(g) and 2951.

(b) Failed to maintain an adequate control record in the form of a columnar record in chronological order of all trust funds received, deposited into, and disbursed from the escrow trust account, in violation of Code Section 10145 and Regulations 2831, 2950(d) and 2951.

(c) Failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all trust funds received and disbursed by the escrow trust account,

1 as required by Code Section 10145 and Regulations 2831.2,  
2 2950(d) and 2951.

3 (d) Permitted salesperson Leonard J. Ruest Jr., who is  
4 not licensed to SREI, and Dolores B. Klein, an unlicensed person  
5 who was not bonded, to be authorized signatories on the escrow  
6 trust account in violation of Code Section 10145 and Regulation  
7 2834.

8 (e) While acting in the capacity of an escrow holder  
9 in three purchase and sale transactions (/escrow Numbers 3-613,  
10 3-613 again, and 3-596), failed to place trust funds, including  
11 earnest money deposits, accepted on behalf of another into the  
12 hands of the owner of the funds, a neutral escrow depository or  
13 into a trust fund account in the name of the broker at a bank or  
14 other financial institution not later than the next business day  
15 following receipt of the funds by the broker or by the broker's  
16 salesperson, as required by Code Section 10145 and Regulations  
17 2832(e), 2950(f) and 2951.  
18

19 (f) Used the fictitious name of "West Foothill Escrow"  
20 to conduct broker-controlled escrow activities by placing said  
21 unlicensed name on the escrow trust account, without holding a  
22 license bearing this fictitious business name, in violation of  
23 Code Section 10159.5 and Regulation 2731.

24 (g) Failed to place funds accepted on behalf of buyers  
25 in the form of escrow deposits into the hands of the owner of  
26 the funds, into a neutral escrow depository or into a trust fund  
27

1 account in the name of the broker as trustee at a bank or other  
2 financial institution not later than three business days  
3 following receipt of the funds, in violation of Code Section  
4 10145 of the Code and Regulations 2832, 2950(d) and 2951.

5 10.

6 The conduct, acts and omissions of Respondents  
7 SREI and SAUDER as described in Paragraph 10, above, violated  
8 the Code and the Regulations as set forth below:

9  
10 PARAGRAPH

PROVISIONS VIOLATED

11 9(a)

Code Section 10145  
and Regulations 2832.1,  
2950(d), 2950(g) and 2951

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15 9(b)

Code Section 10145  
and Regulations 2831, 2950(d)  
and 2951.

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19 9(c)

Code Section 10145  
and Regulation 2831.2,  
2950(d) and 2951.

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23 9(d)

Code Section 10145  
and Regulation 2834

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- 9 (e) Code Section 10145  
and Regulations 2832 (e)  
and 2950 (f)
- 9 (f) Code Section 10159.5  
and Regulation 2731
- 9 (g) Code Section 10145  
and Regulation 2832, 2950 (d)  
and 2951

Each of the foregoing violations constitutes cause for the suspension or revocation of all real estate licenses and license rights of Respondents SREI and SAUDER, under the provisions of Code Sections 10177 (d) and/or 10177 (g).

11.

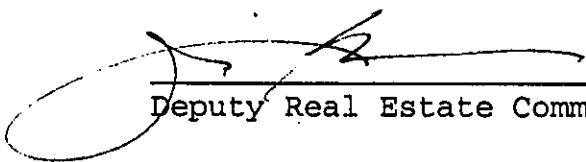
The conduct, acts and/or omissions of SAUDER, in causing, allowing, or permitting SREI to violate the Real Estate Law, as described, herein above, constitutes failure on the part of Respondent SAUDER, as the officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of SREI, as required by Code Section 10159.2. Said conduct is cause to suspend or revoke the real estate licenses and license rights of SAUDER pursuant to the provisions of Code Sections 10177 (d) or 10177 (g) and 10177 (h).

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1                   WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations made by the Accusation and, that  
3 upon proof thereof, a decision be rendered imposing disciplinary  
4 action against all licenses and license rights of Respondent  
5 SAUDER REAL ESTATE INC., and Nanci Jo Sauder; individually and  
6 as designated officer of Sauder Real Estate Inc., under the Real  
7 Estate Law (Part 1 of Division 4 of the Business and Professions  
8 Code) and for such other and further relief as may be proper  
9 under other applicable provisions of law.

10 Dated at Los Angeles, California

11                   *23 June 2005*

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14 \_\_\_\_\_  
15 Deputy Real Estate Commissioner  
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23 cc: Sauder Real Estate Inc.  
24       c/o Nanci Jo Sauder  
25       Janice Wadell  
26       LA Audit Section - Kitlin Chan  
27       Sacto.  
          OA