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ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350

Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

FILED

NOV 30 2007

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-33903 LA
)	
FUDOSAN INC. ReMax Experience)	<u>STIPULATION</u>
and Security Pacific Capital;)	<u>AND</u>
and TIMOTHY RORY DELANEY,)	<u>AGREEMENT</u>
individually and as)	
designated officer of)	
Fudosan Inc.,)	
)	
Respondents.)	

It is hereby stipulated by and between Respondents FUDOSAN INC., a corporate real estate broker, and TIMOTHY RORY DELANEY, individually and as designated officer of Fudosan Inc. (sometimes collectively referred to as "Respondents"), represented by M. Stephen Davis, Esq. and the Complainant, acting by and through Elliott Mac Lennan, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation ("Accusation") filed on April 17, 2007, in this

matter:

1
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 and the right to cross-
24 examine 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
26
27

herein.

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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 Respondent 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 the audit (SD 050008
13 & SD 050012) which led to this disciplinary action. The amount
14 of said cost for the audit is \$8,039.06.

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 \$8,039.06.

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DETERMINATION OF ISSUES

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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 FUDOSAN INC. and
6 TIMOTHY RORY DELANEY as described in Paragraph 4, above, is in
7 violation of Section 10145 of the Business and Professions Code
8 ("Code") and Sections 2831, 2831.1, 2831.2 and 2832(a) and
9 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 Section
13 10177(d).

14 II.

15 The conduct, acts or omissions of TIMOTHY RORY DELANEY,
16 as described in Paragraph 4, constitutes a failure to keep
17 FUDOSAN INC. in compliance with the Real Estate Law during the
18 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).

22 III.

23
24 The conduct, acts or omissions of TIMOTHY RORY DELANEY,
25 as described in Paragraph 4, constitutes a failure to comply with
26 the terms and conditions of the Stipulation and Agreement in
27

1 Settlement and Order (H-31619 LA) effective August 25, 2005.

2 This conduct is a basis for the suspension or revocation of
3 Respondent's license pursuant to Code Section 10177(k).

4 ORDER

5 WHEREFORE, THE FOLLOWING ORDER is hereby made:

6 I.

7 A. All licenses and licensing rights of Respondents

8 FUDOSAN INC. and TIMOTHY RORY DELANEY under the Real Estate Law
9 are suspended for a period of ninety (90) days from the effective
10 date of this Decision; provided, however, that sixty (60) days of
11 said suspension shall be stayed for two (2) years upon the
12 following terms and conditions:

13 1. 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.

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

24 B. The initial thirty (30) day portion of said ninety
25 (90) day suspension shall commence on the effective date of this
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1 Decision; provided, however, that if Respondents petition, said
2 suspension shall be stayed upon condition that:

3 1. Pursuant to Section 10175.2 of the Business and
4 Professions Code, Respondents shall pay a monetary penalty of
5 thirty three dollars and thirty three cents (\$33.33) per day each
6 or One Thousand Dollars (\$1,000), totaling Two Thousand Dollars
7 (\$2,000) for both Respondents.

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

12 3. No further cause for disciplinary action against
13 the real estate license of Respondents occur within two (2) years
14 from the effective date of the Decision in this matter.

15 4. If Respondents fail to pay the monetary penalty in
16 accordance with the terms and conditions of the Decision, the
17 Commissioner may, without a hearing, order the immediate
18 execution of all or any part of the stayed suspension in which
19 event Respondents shall not be entitled to any repayment nor
20 credit, prorated or otherwise, for money paid to the Department
21 under the terms of this Decision.

22 5. If Respondents pay the monetary penalty and provide
23 evidence, above, and if no further cause for disciplinary action
24 against the real estate licenses of Respondents occur within two
25 (2) years from the effective date of the Decision, the stay
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1 hereby granted shall become permanent.

2 II.

3 Pursuant to Section 10148 of the Business and

4 Professions Code, Respondents FUDOSAN INC. and TIMOTHY RORY
5 DELANEY shall pay the Commissioner's reasonable cost for (a) the
6 audit which led to this disciplinary action (b) a subsequent
7 audit to determine if Respondents are now in compliance with the
8 Real Estate Law. The cost of the audit which led to this
9 disciplinary action is \$8,039.06. In calculating the amount of
10 the Commissioner's reasonable cost, the Commissioner may use the
11 estimated average hourly salary for all persons performing audits
12 of real estate brokers, and shall include an allocation for
13 travel time to and from the auditor's place of work. Said amount
14 for the prior and subsequent audits shall not exceed \$16,078.12.

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

19 The Commissioner may suspend the license of Respondents
20 pending a hearing held in accordance with Section 11500, et seq.,
21 of the Government Code, if payment is not timely made as provided
22 for herein, or as provided for in a subsequent agreement between
23 the Respondent and the Commissioner. The suspension shall remain
24 in effect until payment is made in full or until Respondents
25 enter into an agreement satisfactory to the Commissioner to
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1 provide for payment, or until a decision providing otherwise is
2 adopted following a hearing held pursuant to this condition.

3 III.

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

15 IV.

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

09-05-07

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ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

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6 * * *

7 EXECUTION OF THE STIPULATION

8 We have read the Stipulation and discussed it with our
9 counsel. Its terms are understood by us and are agreeable and
10 acceptable to us. We understand that we are waiving rights given
11 to us by the California Administrative Procedure Act (including
12 but not limited to Sections 11506, 11508, 11509 and 11513 of the
13 Government Code), and we willingly, intelligently and voluntarily
14 waive those rights, including the right of requiring the
15 Commissioner to prove the allegations in the Accusation at a
16 hearing at which we would have the right to cross-examine
17 witnesses against us and to present evidence in defense and
18 mitigation of the charges.
19

20 MAILING AND FACSIMILE

21 Respondents (1) shall mail the original signed
22 signature page of the stipulation herein to Elliott Mac Lennan:
23 Attention: Legal Section, Department of Real Estate, 320 W.
24 Fourth St., Suite 350, Los Angeles, California 90013-1105.
25 Additionally, Respondents shall also (2) facsimile a copy of
26 signed signature page, to the Department at the following
27

1 telephone/fax number: (213) 576-6917, Attention: Elliott Mac
2 Lennan.

3 A facsimile constitutes acceptance and approval of the
4 terms and conditions of this stipulation. Respondents agree,
5 acknowledge and understand that by electronically sending to the
6 Department a facsimile copy of Respondents' actual signature as
7 it appears on the stipulation, that receipt of the facsimile copy
8 by the Department shall be as binding on Respondents as if the
9 Department had received the original signed stipulation.

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12 DATED: 10/31/07

Timothy Rory Delaney
FUDOSAN INC., a corporate real
estate broker,
BY: TIMOTHY RORY DELANEY D.O.,
Respondent

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16
17 DATED: 10/31/07

T.R. Delaney
TIMOTHY RORY DELANEY, individually
and as designated officer of
FUDOSAN INC., Respondent

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21 DATED: 11-1-07

M. Stephen Davis
M. STEPHEN DAVIS, ESQ.
Attorney for Respondents
Approved as to form

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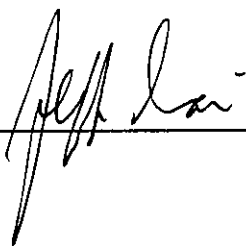
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The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondents FUDOSAN INC. and TIMOTHY
RORY DELANEY, individually and as designated officer of Fudosan
Inc., and shall become effective at 12 o'clock noon on
December 31, 2007.

IT IS SO ORDERED 11-19, 2007.

JEFF DAVI
Real Estate Commissioner



1.

1 The Complainant, Janice Waddell, acting in her official
2 capacity as a Deputy Real Estate Commissioner of the State of
3 California, makes this Accusation against FUDOSAN INC. and
4 TIMOTHY RORY DELANEY.
5

2.

6 All references to the "Code" are to the California
7 Business and Professions Code and all references to "Regulations"
8 are to Title 10, Chapter 6, California Code of Regulations.
9

10 LICENSE HISTORY

3.

11
12
13 A.1 At all times mentioned, FUDOSAN INC. ("FUDOSAN")
14 was licensed or had license rights issued by the Department of
15 Real Estate ("Department") as a real estate broker. On May 02,
16 2003, FUDOSAN was originally licensed as a real estate broker.

17 A.2 On January 14, 2005, in Case No. H-31619 LA, an
18 Accusation was filed against Respondents FUDOSAN and TIMOTHY RORY
19 DELANEY, that resulted in discipline as set forth below in
20 Paragraph 11.

21 B. At all times mentioned, TIMOTHY RORY DELANEY
22 ("DELANEY") was licensed or had license rights issued by the
23 Department of Real Estate (Department) as a real estate broker.
24 On September 16, 2000, DELANEY was originally licensed as a real
25 estate salesperson. On August 16, 2002, DELANEY was originally
26 licensed as a real estate broker. On May 02, 2003, DELANEY was
27 licensed as the designated officer of FUDOSAN.

1 C. At all times material herein, FUDOSAN was licensed
2 by the Department as a corporate real estate broker by and
3 through DELANEY, as the designated officer and broker
4 responsible, pursuant to Code Section 10159.2 of the Business and
5 Professions Code for supervising the activities requiring a real
6 estate license conducted on behalf FUDOSAN of by FUDOSAN's
7 officers, agents and employees, including DELANEY.
8

9 BROKERAGE

10 4.

11 At all times mentioned, in the City of Temecula, County
12 of Riverside, FUDOSAN acted as a real estate broker and conducted
13 licensed activities within the meaning of:

14 A. Code Section 10131(d). FUDOSAN operated a
15 residential resale brokerage dba ReMax Experience.

16 B. Code Section 10131(d). FUDOSAN operated a mortgage
17 and loan brokerage dba Security Pacific Capital; and

18 C. In addition, FUDOSAN conducted broker-controlled
19 escrows through its escrow divisions, under the exemption set
20 forth in California Financial Code Section 17006(a)(4) for real
21 estate brokers performing escrows incidental to a real estate
22 transaction where the broker is a party and where the broker is
23 performing acts for which a real estate license is required.
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AUDIT

5.

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3 On February 28, 2006, the Department completed an audit
4 examination of the books and records of FUDOSAN pertaining to the
5 residential resale, mortgage loan and broker-escrow activities
6 described in Paragraph 4, that require a real estate license.
7 The audit examination covered a period of time beginning on
8 October 1, 2004 to December 31, 2005. The audit examination
9 revealed violations of the Code and the Regulations as set forth
10 in the following paragraphs, and more fully set forth in Audit
11 Report SD 050008 and SD 050012 and the exhibits and workpapers
12 attached thereto.

13 TRUST ACCOUNTS

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15 6.

16 At all times mentioned, in connection with the activities
17 described in Paragraph 4, above, FUDOSAN accepted or received
18 funds including funds in trust (hereinafter "trust funds") from
19 or on behalf of actual or prospective parties to transactions
20 including buyers, sellers, borrowers and escrowholders handled by
21 FUDOSAN and thereafter made deposits and or disbursements of such
22 funds. From time to time herein mentioned during the audit
23 period, said trust funds were deposited and/or maintained by
24 FUDOSAN in the bank accounts as follows:

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1 "Fudosan Inc. dba Vineyard Escrow Trust Account
453100332"

2 Foothill Independent Bank
3 Temecula, California

("T/A #1")

4 "Fudosan Inc. dba Vineyard Escrow Trust Account
1892059773"

5 Commercica Bank
6 Los Angeles, California

("T/A #2")

7 "Vineyard Escrow Trust Account (Department of Corporations)
Account)

8 1892059732"
9 Commercica Bank
El Segundo, California

("T/A #3")

10
11 VIOLATIONS OF THE REAL ESTATE LAW

12 7.

13 In the course of activities described in Paragraphs 4
14 and 6, above, and during the examination period described in
15 Paragraph 5, Respondents FUDOSAN and DELANEY, acted in violation
16 of the Code and the Regulations in that they:

17 (a) Failed to maintain a control record in the form of
18 a columnar record in chronological order of all trust funds
19 received, deposited and disbursed by T/A #1 and T/A #2, in
20 violation of Code Section 10145 and Regulations 2831, 2950(d) and
21 2951.

22 (b) Failed to maintain a separate record for each
23 beneficiary or transaction, thereby failing to account for all
24 trust funds received, deposited and disbursed for by T/A #1 and
25 T/A #2, as required by Code Section 10145 and Regulation 2831.1,
26 2950(d) and 2951.
27

1 (c) Failed to perform a monthly reconciliation of the
2 balance of all separate beneficiary or transaction records
3 maintained pursuant to Regulation 2831.1 with the record of all
4 trust funds received and disbursed by T/A #1 and T/A #2, as
5 required by Code Section 10145 and Regulations 2831.2, 2950(d)
6 and 2951.

7 (d) Failed to maintain a control record in the form of
8 a columnar record in chronological order of all trust funds
9 received, deposited and disbursed including a record of Earnest
10 Money Deposits received and deposited by Teresa Fox in the amount
11 of \$1,000 and by Toraji, LLC in the amount of \$1,500, in
12 violation of Code Section 10145 and Regulations 2831, 2950(d) and
13 2951.

14 (e) (1) T/A #2 was not in the name of the broker as
15 trustee at a bank or other financial institution, nor designated
16 as a trust account, in violation of Code Section 10145 of the
17 Code and Regulations 2832(a).

18 (e) (2) Failed to place trust funds, including fifteen
19 uncashed cashiers checks, accepted on behalf of another into the
20 hands of the owner of the funds, a neutral escrow depository or
21 into a trust fund account in the name of the trustee at a bank or
22 other financial institution not later than three business days
23 following receipt of the funds by the broker or by the broker's
24 salesperson, as required by Code Section 10145 and Regulation
25 2832(a), 2950(d), 2950(f) and 2951.
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1
2 (f) Permitted and/or caused the disbursement of trust
3 funds to a loan appraiser on the representation that the amount
4 was needed to pay for a loan appraisal, which payment exceeded
5 the actual cost of the service. Respondents did not disclose
6 this "mark-up" to borrower-beneficiary Alfredo Hinojosa who was
7 charged \$400 for an invoiced \$350 loan appraisal, in violation of
8 Code Sections 10176(a) and 10176(g). On February 25, 2006, per
9 check #1161 dated February 25, 2006, \$50 was refunded to
10 Hinojosa.

11 (g) Pursuant to the terms and conditions of the
12 Stipulation and Agreement in Settlement and Order in H-31619 LA,
13 effective August 25, 2005, as described in Paragraph 11, below,
14 to wit, that (1) no further cause for disciplinary action occur
15 within two years from the effective date of the stipulated
16 Decision and that (2) Respondent FUDOSAN shall obey all laws,
17 rules and regulations governing the rights, duties and
18 responsibilities of a real estate licensee in the State of
19 California, Respondent FUDOSAN is not in compliance with terms
20 and conditions therein, in violation of Code Section 10177(k).

22 8.

23 The conduct of Respondents FUDOSAN and DELANEY,
24 described in Paragraph 7, above, violated the Code and the
25 Regulations as set forth below:

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PARAGRAPH

PROVISIONS VIOLATED

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7(a)

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

7(b)

Code Section 10145 and Regulations
2831.1, 2950(d) and 2951

7(c)

Code Section 10145 and Regulations
2831.2, 2950(d) and 2951

7(d)

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

7(e)

Code Section 10145 and Regulations
2832(a), 2950(d) and 2951

7(f)

Code Section 10176(a) and 10176(g)

7(g)

Code Section 10177(k)

The foregoing violations constitutes cause for the suspension or
revocation of the real estate license and license rights of
FUDOSAN and DELANEY under the provisions of Code Sections
10176(a), 10176(g), 10177(d) and/or 10177(g).

NEGLIGENCE

9.

The overall conduct of Respondents FUDOSAN and DELANEY constitutes negligence or incompetence especially in regard to trust fund handling. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of said pursuant to Code Section 10177(g).

SUPERVISION AND COMPLIANCE

10.

The overall conduct of Respondent DELANEY constitutes a failure on his part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of FUDOSAN as required by Code Section 10159.2, and to keep FUDOSAN in compliance with the Real Estate Law, and is cause for the suspension or revocation of the real estate license and license rights of DELANEY pursuant to the provisions of Code Sections 10177(d), 10177(g), 10177(h) and 10177(k).

PRIOR DEPARTMENTAL ACTION

11.

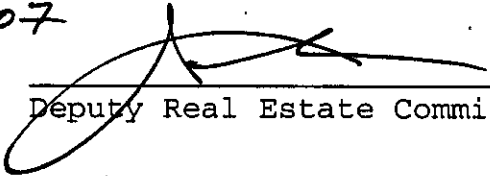
On January 14, 2005, in Case No. H-31619 LA, an Accusation was filed against Respondents FUDOSAN and DELANEY, that resulted in discipline by stipulated discipline including a stayed suspension and monetary penalty of Respondents' real estate broker licenses for violations of Code Sections 10145,

1 10177(d) and Regulation Sections 2831, 2831.1, 2831.2, 2832 and
2 2950(d), effective August 25, 2005.

3 WHEREFORE, Complainant prays that a hearing be
4 conducted on the allegations of this Accusation and that upon
5 proof thereof, a decision be rendered imposing disciplinary
6 action against the license and license rights of Respondents
7 FUDOSAN INC. and TIMOTHY RORY DELANEY, under the Real Estate Law
8 (Part 1 of Division 4 of the Business and Professions Code) and
9 for such other and further relief as may be proper under other
10 applicable provisions of law.

11 Dated at Los Angeles, California

12 this *16 April 2007*

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14 _____
15 Deputy Real Estate Commissioner
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24 cc: Fudosan Inc.
25 c/o Timothy Rory Delaney D.O.
26 Janice Waddell
27 Sacto
Audits - Jennifer Borromeo