

1 Department of Real Estate  
2 320 W. 4<sup>th</sup> St., Room 350  
3 Los Angeles, California 90013

4 Telephone: (213) 576-6982

**FILED**  
MAY - 4 2009

DEPARTMENT OF REAL ESTATE

by 

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 \* \* \*

10	In the Matter of the Accusation of )	No. H-35545 LA
	)	L-2008030418
11	MORENO VALLEY REALTY, INC., )	
	and THEODORE JAMES BOECKER, )	<u>STIPULATION AND AGREEMENT</u>
12	individually and as )	
	designated officer of )	
13	the corporation, )	
	)	
14	)	
	)	
15	Respondents. )	
16	)	

17 It is hereby stipulated by and between MORENO VALLEY  
18 REALTY, INC. and THEODORE JAMES BOECKER (sometimes referred to  
19 as Respondents), and their attorney, Rose Pothier, and the  
20 Complainant, acting by and through James R. Peel, Counsel for  
21 the Department of Real Estate, as follows for the purpose of  
22 settling and disposing of the Accusation filed on December 11,  
23 2008, in this matter.

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

8 2. Respondents have received, read and understand the  
9 Statement to Respondent, the Discovery Provisions of the  
10 Administrative Procedure Act ("APA") and the Accusation filed by  
11 the Department of Real Estate in this proceeding.

12 3. On December 22, 2008, Respondents filed a Notice  
13 of Defense pursuant to Section 11506 of the Government Code for  
14 the purpose of requesting a hearing on the allegations in the  
15 Accusation. Respondents hereby freely and voluntarily withdraw  
16 said Notices of Defense. Respondents acknowledge that they  
17 understand that by withdrawing said Notices of Defense they will  
18 thereby waive their right to require the Commissioner to prove  
19 the allegations in the Accusation at a contested hearing held in  
20 accordance with the provisions of the APA and that they will  
21 waive other rights afforded to them in connection with the  
22 hearing, such as the right to present evidence in defense of the  
23 allegations in the Accusation and 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 filed in this  
3 proceeding. In the interest of expedience and economy,  
4 Respondents choose not to contest these factual allegations, but  
5 to remain silent and understand that, as a result thereof, these  
6 factual statements, will serve as a prima facie basis for the  
7 disciplinary action stipulated to herein. The Real Estate  
8 Commissioner shall not be required to provide further evidence  
9 to prove such 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  
13 to this proceeding and any other proceeding or case in which the  
14 Department of Real Estate ("Department"), the state or federal  
15 government, or an agency of this state, another state or the  
16 federal government is involved.

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

1 7. The Order or any subsequent Order of the Real  
2 Estate Commissioner made pursuant to this Stipulation shall not  
3 constitute an estoppel, merger or bar to any further  
4 administrative or civil proceedings by the Department of Real  
5 Estate with respect to any conduct which was not specifically  
6 alleged to be causes for accusation in this proceeding.

7 DETERMINATION OF ISSUES

8 By reason of the foregoing stipulations and waivers  
9 and solely for the purpose of settlement of the pending  
10 Accusation without a hearing, it is stipulated and agreed that  
11 the following determination of issues shall be made:

12 The conduct, acts and/or omissions of Respondents  
13 MORENO VALLEY REALTY, INC., and THEODORE JAMES BOECKER, as set  
14 forth in the Accusation, constitute cause for the suspension or  
15 revocation of all of the real estate licenses and license rights  
16 of Respondents under the provisions of Section 10177(d) of the  
17 Business and Professions Code ("Code") for violation of  
18 Regulations 2831, 2831.1, 2831.2, and 2832, Title 10, Chapter 6,  
19 California Code of Regulations.  
20

21 ORDER

22 1. Respondent THEODORE JAMES BOECKER is hereby  
23 publicly reprovred.

24 2. All licenses and licensing rights of Respondent  
25 THEODORE JAMES BOECKER are indefinitely suspended unless or  
26 until Respondent provides proof satisfactory to the  
27 Commissioner, of having taken and successfully completed the

1 continuing education course on trust fund accounting and  
2 handling specified in paragraph (3) of subdivision (a) of  
3 Section 10170.5 of the Business and Professions Code. Proof of  
4 satisfaction of this requirement includes evidence that  
5 Respondent has successfully completed the trust fund account and  
6 handling continuing education course within 120 days prior to  
7 the effective date of the Decision in this matter.

8 3. The license and licensing rights of Respondent  
9 MORENO VALLEY REALTY, INC. under the Real Estate Law is  
10 suspended for a period of sixty (60) days from the effective  
11 date of this Decision; provided, however, that thirty (30) days  
12 of said suspension shall be stayed for two (2) years upon the  
13 following terms and conditions:

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

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 of 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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1 c. Provided, however, that if Respondent petitions,  
2 the remaining thirty (30) days of said sixty (60) day suspension  
3 shall be stayed upon condition that:

4 1. Respondent pays a monetary penalty pursuant to  
5 Section 10175.2 of the Business and Professions Code in the  
6 amount of \$1,000.

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

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

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

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1 5. If Respondent pays the monetary penalty and if  
2 no further cause for disciplinary action against the real estate  
3 license of Respondent occurs within two (2) years from the  
4 effective date of the Decision, the stay hereby granted shall  
5 become permanent.

6 4. Pursuant to Section 10148 of the Business and  
7 Professions Code, Respondents MORENO VALLEY REALTY, INC. and  
8 THEODORE JAMES BOECKER shall pay the Commissioner's reasonable  
9 cost not to exceed \$3,033 for the audit which led to this  
10 disciplinary action and shall pay the Commissioner's reasonable  
11 cost not to exceed \$3,033 for a subsequent audit to determine if  
12 Respondent MORENO VALLEY REALTY, INC. has corrected the  
13 violations found in the Determination of Issues. In calculating  
14 the amount of the Commissioner's reasonable cost, the  
15 Commissioner may use the estimated average hourly salary for all  
16 persons performing audits of real estate brokers, and shall  
17 include an allocation for travel costs, including mileage, time  
18 to and from the auditor's place of work and per diem.  
19 Respondents shall pay such cost within 45 days of receiving an  
20 invoice from the Commissioner detailing the activities performed  
21 during the audit and the amount of time spent performing those  
22 activities. The Commissioner may, in his discretion, vacate and  
23 set aside the stay order, if payment is not timely made as  
24 provided for herein, or as provided for in a subsequent  
25 agreement between the Respondents and the Commissioner. The  
26 vacation and the set aside of the stay shall remain in effect  
27

1 until payment is made in full, or until Respondents enter into  
2 an agreement satisfactory to the Commissioner to provide for  
3 payment.

4 Should no order vacating the stay be issued, either in  
5 accordance with this condition or condition "3" on page 5, the  
6 stay imposed herein shall become permanent.

7  
8  
9 DATED:

April 10, 2009

James R. Peel  
JAMES R. PEEL, Counsel for the  
Department of Real Estate

10  
11 \* \* \*

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

23 Respondents can signify acceptance and approval of the  
24 terms and conditions of this Stipulation and Agreement by faxing  
25 a copy of the signature page, as actually signed by Respondents,  
26 to the Department at the following telephone/fax number:  
27 (213) 576-6917. Respondents agree, acknowledge and understand



APR-08-09 MON 07:28 AM

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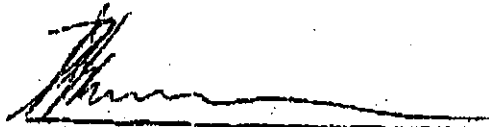
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1 that by electronically sending to the Department a fax copy of  
 2 his or her actual signature as it appears on the Stipulation and  
 3 Agreement, that receipt of the faxed copy by the Department  
 4 shall be as binding on Respondents as if the Department had  
 5 received the original signed Stipulation and Agreement.


6 Further, if the Respondents are represented, the  
 7 Respondents' counsel can signify his or her agreement to the  
 8 terms and conditions of the Stipulation and Agreement by  
 9 submitting that signature via fax.

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DATED: 4/7/09

  
 MORENO VALLEY REALTY, INC.  
 Respondent

DATED: 4/7/09

  
 THEODORE JAMES BORCKER  
 Respondent

DATED: 4/7/09

  
 ROSE POTHIER  
 Counsel for Respondents

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2 his or her actual signature as it appears on the Stipulation and  
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5 received the original signed Stipulation and Agreement.

6 Further, if the Respondents are represented, the  
7 Respondents' counsel can signify his or her agreement to the  
8 terms and conditions of the Stipulation and Agreement by  
9 submitting that signature via fax.

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11  
12 DATED: \_\_\_\_\_

\_\_\_\_\_  
MORENO VALLEY REALTY, INC.  
Respondent

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15 DATED: \_\_\_\_\_

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THEODORE JAMES BOECKER  
Respondent

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18 DATED: \_\_\_\_\_

\_\_\_\_\_  
ROSE POTHIER  
Counsel for Respondents

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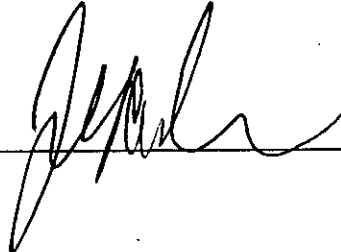
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The foregoing Stipulation and Agreement is hereby  
adopted as my Decision and Order in this matter, and shall  
become effective at 12 o'clock noon on May 25, 2009.

IT IS SO ORDERED 4-28-09

JEFF DAVI  
Real Estate Commissioner

  
\_\_\_\_\_

5/20/09  
1/10/09

**FILED**  
DEC 11 2008  
DEPARTMENT OF REAL ESTATE



1 JAMES R. PEEL, Counsel (SBN 47055)  
Department of Real Estate  
2 320 West Fourth Street, Suite 350  
Los Angeles, CA 90013-1105  
3  
4 Telephone: (213) 576-6982  
-or- (213) 576-6913 (Direct)

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No. H-35545 LA  
12 )  
13 ) A C C U S A T I O N  
14 ) MORENO VALLEY REALTY, INC., )  
15 ) and THEODORE JAMES BOECKER, )  
16 ) individually, and as )  
17 ) designated officer of )  
the corporation, )  
18 )  
19 ) Respondents. )

19 The Complainant, Joseph Aiu, a Deputy Real Estate  
20 Commissioner of the State of California, for cause of accusation  
21 against MORENO VALLEY REALTY, INC. and THEODORE JAMES BOECKER,  
22 individually, and as designated officer of Moreno Valley Realty,  
23 Inc., alleges as follows:

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I

The Complainant, Joseph Aiu, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against MORENO VALLEY REALTY, INC. and THEODORE JAMES BOECKER.

II

MORENO VALLEY REALTY, INC. and THEODORE JAMES BOECKER (hereinafter referred to as "Respondents"), are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter Code).

III

At all times herein mentioned, Respondent MORENO VALLEY REALTY, INC. was licensed as a real estate broker with Respondent THEODORE JAMES BOECKER as its designated officer. Respondents were previously suspended for 60 days, stayed for two years on terms and conditions, as a result of the decision in case No. H-28441 LA effective September 28, 2000.

IV

At all times material herein, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(a) and (b) of the Code including corresponding broker escrow activities.

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1 V

2 On or about February 22, 2008, the Department completed  
3 an examination of Respondents' books and records, pertaining to  
4 the activities described in Paragraph IV above, covering a period  
5 from December 1, 2004, through November 30, 2007, which  
6 examination revealed violations of the Code and of Title 10,  
7 Chapter 6, California Code of Regulations (hereinafter  
8 Regulations) as set forth below.

9 VI

10 The examination described in Paragraph V, above,  
11 determined that, in connection with the activities described in  
12 Paragraph IV above, Respondents accepted or received funds,  
13 including funds in trust (hereinafter "trust funds") from or on  
14 behalf of principals, and thereafter made deposit or disbursement  
15 of such funds.

16 VII

17 In the course of activities described in Paragraphs IV  
18 through VI and during the examination period described in  
19 Paragraph V, Respondents acted in violation of the Code and the  
20 Regulations as follows, and as more specifically set forth in  
21 Audit Report No. SD 070008 and related exhibits:

22 1. Violated Regulation 2831 by not maintaining a  
23 columnar record of all trust funds received and disbursed in  
24 connection with the property management activity. Respondent  
25 maintained unaccounted for funds in its property management trust  
26 account.  
27

1           2. Violated Regulation 2831.1 by maintaining separate  
2 records in connection with the property management activity that  
3 were inaccurate. In some instances, the ending balances were  
4 crossed out and corrected manually without explanation.

5           3. Violated Regulation 2831.2 by not performing  
6 monthly reconciliations of the separate records to the control  
7 record in connection with the property management activity.

8           4. Violated Regulation 2832 in that the trust account  
9 for the property management activity was not designated a trust  
10 account.

11           5. Violated Regulation 2725 by not having policies and  
12 procedures to maintain a control record and accurate separate  
13 records for the property management activity.

14                               VIII

15           The conduct of Respondents MORENO VALLEY REALTY, INC.  
16 and THEODORE JAMES BOECKER, as alleged above, subjects their real  
17 estate licenses and license rights to suspension or revocation  
18 pursuant to Sections 10177(d), and/or 10177(g) of the Code.

19                               IX

20           The conduct of Respondent THEODORE JAMES BOECKER, as  
21 alleged above, is in violation of Code Section 10159.2 and  
22 subjects his real estate licenses and license rights to  
23 suspension or revocation pursuant to Sections 10177(d), 10177(g),  
24 and 10177(h) of the Code.

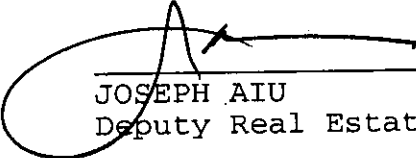
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1           WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against all licenses and license rights of Respondents  
5 MORENO VALLEY REALTY, INC. and THEODORE JAMES BOECKER under the  
6 Real Estate Law (Part 1 of Division 4 of the Business and  
7 Professions Code) and for such other and further relief as may be  
8 proper under other applicable provisions of law.

9 Dated at San Diego, California  
10 this 8 day of December, 2008.

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14 JOSEPH AIU  
15 Deputy Real Estate Commissioner  
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23 cc: Moreno Valley Realty, Inc.  
24 Theodore James Boecker  
25 Joseph Aiu  
26 Audit Section  
27 Sacto.