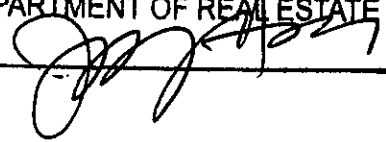


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**FILED**

JUL 06 2011

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
MICHAEL JOSEPH MALONE, ) NO. H-36329 LA  
Respondent. )

ORDER SUSPENDING REAL ESTATE LICENSE

TO: MICHAEL JOSEPH MALONE:

Effective September 7, 2010, your restricted real estate broker license was suspended on the terms, conditions, and restrictions set forth in the Real Estate Commissioner's Order of July 22, 2010, in Case No. H-36239 LA. Among those terms, conditions and restrictions, you were required to take and complete the Professional Responsibility Examination administered by the Department within six (6) months from the effective date of the Decision. The Commissioner has determined that as of March 7, 2011, you have failed to satisfy this condition.

1 NOW, THEREFORE, IT IS ORDERED under authority of the  
2 Order issued in this matter that the real estate salesperson  
3 license heretofore issued to Respondent and the exercise of any  
4 privileges thereunder is hereby suspended until such time as you  
5 provide proof satisfactory to the Department of compliance with  
6 the "condition" referred to above, or pending final determination  
7 made after hearing (see "Hearing Rights" set forth below).

8 IT IS FURTHER ORDERED that all license certificates and  
9 identification cards issued by Department which are in the  
10 possession of Respondent be immediately surrendered by personal  
11 delivery or by mailing in the enclosed, self-addressed envelope  
12 to:

13 DEPARTMENT OF REAL ESTATE  
14 ATTN: FLAG SECTION  
15 P. O. Box 187000  
Sacramento, CA 95818-7000

16  
17 HEARING RIGHTS: You have the right to a hearing to  
18 contest the Commissioner's determination that you are in  
19 violation of the Order issued in this matter. If you desire a  
20 hearing, you must submit a written request. The request may be  
21 in any form, as long as it is in writing and indicates that you  
22 want a hearing. Unless a written request for a hearing, signed  
23 by or on behalf of you, is delivered or mailed to the Department  
24 at 2201 Broadway, P. O. Box 187000, Sacramento, California 95818-  
25 7000, within 20 days after the date that this Order was mailed to  
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1 or served on you, the Department will not be obligated or  
2 required to provide you with a hearing.

3 This Order shall be effective immediately.

4 DATED: 6/28/11.

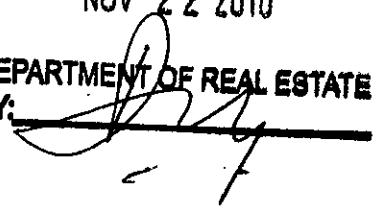
5 BARBARA J. BIGBY  
6 Acting Real Estate Commissioner

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FILED

NOV 22 2010

DEPARTMENT OF REAL ESTATE  
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \*

In the Matter of the Accusation of )  
PACIFICA LUXURY PROPERTIES, )  
A California corporation, )  
doing business as Re/Max Pacifica, )  
Pacifica Escrow Company, Marina )  
Pointe Properties, and Pacifica )  
Disclosures Services; and )  
MICHAEL JOSEPH MALONE, individually )  
and as designated officer of )  
Pacifica Luxury Properties, )  
Respondents. )

No. H-36329 LA  
L-2010010252

ORDER NUNC PRO TUNC MODIFYING

STIPULATION AND AGREEMENT

It having been called to the attention of the Real Estate Commissioner that there are errors in the Decision dated July 22, 2010, effective August 25, 2010, and good cause appearing therefor, the Decision is amended as follows:

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///

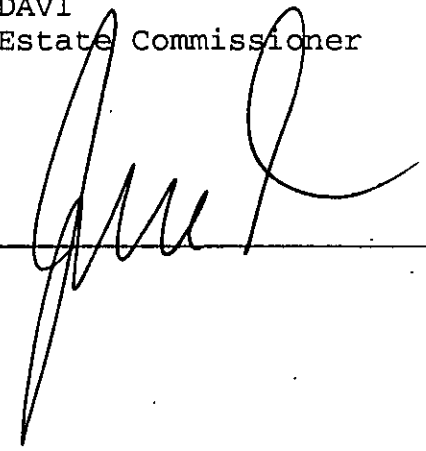
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1           Page 9., paragraph IV., line 20, is amended to read:  
2 "months from the effective date of this Decision"

3           Page 10, paragraph V., line 7, is amended to read:  
4 "months from the effective date of this Decision, take"

5           This Order, nunc pro tunc to August 25, 2010, shall  
6 become effective at immediately.

7           IT IS SO ORDERED 11-18-2010

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9                           JEFF DAVI  
10                          Real Estate Commissioner  
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**FILED**

SEP 07 2010

DEPARTMENT OF REAL ESTATE

By L. J. J. J.

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of

No. H-36329 LA

L-2010010252

PACIFICA LUXURY PROPERTIES,

a California Corporation,

doing business as Re/Max Pacifica,

Pacifica Escrow Company, Marina

Pointe Properties, and Pacifica

Disclosures Services; and

MICHAEL JOSEPH MALONE, individually

and as designated officer of

Pacifica Luxury Properties,

Respondents.

ORDER DENYING RECONSIDERATION

On July 22, 2010, a Decision by Stipulation and Agreement (Stipulation) was rendered in the above-entitled matter to become effective on August 25, 2010.

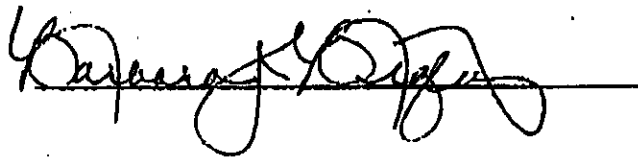
On August 9, 2010, Respondent MICHAEL JOSEPH MALONE petitioned for reconsideration and submitted argument in support of his petition.

1           An Order Staying Effective Date was issued staying  
2 the effective date of August 25, 2010, for a total period of  
3 ten (10) days until 12 o'clock noon on September 7, 2010, to  
4 consider MICHAEL JOSEPH MALONE's petition for reconsideration.  
5

6           I have given due consideration to the petition of  
7 respondent. I find no good cause to reconsider the Decision of  
8 July 22, 2010, and reconsideration is hereby denied.

9           IT IS SO ORDERED 9/7, 2010.

10                           JEFF DAVI  
11                           Real Estate Commissioner

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FILED

AUG 16 2010

DEPARTMENT OF REAL ESTATE

BY: R. Melendez

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \*

In the Matter of the Accusation of ) NO. H-36329 LA  
) L-2010010252  
PACIFICA LUXURY PROPERTIES, a )  
California Corporation, doing )  
business as RE/Max Pacifica, )  
Pacifica Escrow Company, Marina )  
Pointe Properties, and Pacifica )  
Disclosures Services; and )  
MICHAEL JOSEPH MALONE, individually )  
And as designated officer of )  
Pacifica Luxury Properties, )  
)  
Respondents. )

ORDER STAYING EFFECTIVE DATE

On July 22, 2010, a Decision by Stipulation and Agreement was rendered in the above-entitled matter to become effective on August 25, 2010.

IT IS HEREBY ORDERED that the effective date of the Decision of July 22, 2010, is stayed for a period of ten (10) days to consider Respondent MICHAEL JOSEPH MALONE's petition for reconsideration.

1           The Decision of July 22, 2010, shall become effective at  
2 12 o' clock noon on September 7, 2010.

3 DATED:

August 16, 2010

4 JEFF DAVI

Real Estate Commissioner

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6 By:

Dolores Weeks  
DOLORES WEEKS

Regional Manager

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*facts*

RECEIVED  
Dept. of Real Estate

FILED

Department of Real Estate  
320 W. 4<sup>TH</sup> Street, Suite 350  
Los Angeles, CA 90013-1105

JUL 28 2010

MAIL SORT #2

JUL 26 2010

Telephone: (213) 576-6982

DEPARTMENT OF REAL ESTATE  
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of

No. H-36329 LA  
L-2010010252

PACIFICA LUXURY PROPERTIES  
a California corporation,  
doing business as Re/Max Pacifica,  
Pacifica Escrow Company, Marina  
Pointe Properties, and Pacifica  
Disclosures Services; and  
MICHAEL JOSEPH MALONE, individually  
and as designated officer of  
Pacifica Luxury Properties,

STIPULATION  
AND  
AGREEMENT

Respondents.

It is hereby stipulated by and between Respondents  
PACIFICA LUXURY PROPERTIES, a California corporation and MICHAEL  
JOSEPH MALONE, individually and as designated officer of Pacifica  
Luxury Properties (sometimes collectively referred to as  
"Respondents"), 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 filed on October 28, 2009, in this matter:

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

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

12           3. Respondents filed a Notice of Defense pursuant to  
13 Section 11506 of the Government Code for the purpose of  
14 requesting a hearing on the allegations in the Accusation.  
15 Respondents hereby freely and voluntarily withdraw said Notice of  
16 Defense. Respondents acknowledge that they understand that by  
17 withdrawing said Notice of Defense they thereby waive their right  
18 to require the Commissioner to prove the allegations in the  
19 Accusation at a contested hearing held in accordance with the  
20 provisions of the APA and that they will waive other rights  
21 afforded to them in connection with the hearing such as the right  
22 to present evidence in their defense the right to cross-examine  
23 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 is made for the purpose of  
11 reaching an agreed disposition of this proceeding and is  
12 expressly limited to this proceeding and any other proceeding or  
13 case in which the Department of Real Estate ("Department"), or  
14 another licensing agency of this state, another state or if the  
15 federal government is involved, and otherwise shall not be  
16 admissible in any other criminal or civil proceeding.

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 below "Order". In the event that the Commissioner in his  
22 discretion does not adopt the Stipulation, the Stipulation shall  
23 be void and of no effect and Respondents shall retain the right  
24 to a hearing and proceeding on the Accusation under the  
25 provisions of the APA and shall not be bound by any stipulation  
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or waiver made herein.

7. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation 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.

8. Respondents understand that by agreeing to this Stipulation, Respondents agree to pay, pursuant to Business and Professions Code Section 10148, the cost of the audit which led to this disciplinary action. The amount of said cost is \$9,434.00

9. Respondents have received, read, and understand the "Notice Concerning Costs of Subsequent Audit". Respondents further understand that by agreeing to this Stipulation, the findings set forth below in the Determination of Issues become final, and the Commissioner may charge Respondents for the cost of any subsequent audit conducted pursuant to Business and Professions Code Section 10148 to determine if the violations have been corrected. The maximum cost of the subsequent audit will not exceed \$9,434.00.

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DETERMINATION OF ISSUES

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

I.

The conduct of PACIFICA LUXURY PROPERTIES as described in Paragraph 4, above, is in violation of Sections 10145 and 10148 of the Business and Professions Code ("Code") and Sections 2832.1, 2831, 2831.1, 2831.2, 2834, 2950(d), 2950(g) and 2951, of Title 10, Chapter 6 of the California Code of Regulations ("Regulations") and is a basis for the suspension or revocation of Respondent's license and license rights as violations of the Real Estate Law pursuant to Code Section 10177(d).

II.

The conduct of MICHAEL JOSEPH MALONE, as described in Paragraph 4, above, constitutes a failure to keep Pacifica Luxury Properties in compliance with the Real Estate Law during the time that he was the officer designated by a corporate broker licensee in violation of Section 10159.2 of the Code. This conduct is a basis for the suspension or revocation of Respondent's license pursuant to Code Section 10177(h).

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

The license and license rights of PACIFICA LUXURY  
PROPERTIES and MICHAEL JOSEPH MALONE, under the Real Estate Law,  
are suspended for a period of one hundred thirty (130) from the  
effective date of this Decision.

A. Provided, however, that if Respondents request, the  
initial thirty (30) days of said suspension (or a portion  
thereof) shall be stayed for two (2) years upon condition that:

1. Respondents each pay a monetary penalty pursuant to  
Section 10175.2 of the Business and Professions Code at the rate  
of \$116.66 per day for each day of the suspension for a monetary  
penalty of \$3,500 each or a total monetary penalty of \$7,000.

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 licenses of Respondents 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 (100) days of the one  
11 hundred thirty (130) day suspension shall be stayed for two (2)  
12 years upon the 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; and

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 from the effective date of  
19 this Decision. Should such a 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.  
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II.

Pursuant to Section 10148 of the Business and Professions Code, Respondents shall pay the Commissioner's reasonable cost for (a) the audits which led to this disciplinary action and (b) a subsequent audits to determine if Respondents PACIFICA LUXURY PROPERTIES and MICHAEL JOSEPH MALONE are now in compliance with the Real Estate Law. The cost of the audit which led to this disciplinary action is \$9,434.00. 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 \$18,868.00. Respondents are jointly and severally liable for the cost of the audits.

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 Respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until a

1 Respondent enters into an agreement satisfactory to the  
2 Commissioner to provide for payment, or until a decision  
3 providing otherwise is adopted following a hearing held pursuant  
4 to this condition.

5 III.

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

17 IV.

18 Respondent MICHAEL JOSEPH MALONE shall, within nine (9)  
19 months from the date of issuance of the restricted license,  
20 present evidence satisfactory to the Real Estate Commissioner  
21 that Respondent has, since the most recent issuance of an  
22 original or renewal real estate license, taken and successfully  
23 completed the continuing education requirements of Article 2.5 of  
24 Chapter 3 of the Real Estate Law for renewal of a real estate  
25 license. If Respondent fails to satisfy this condition, the  
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1 Commissioner may order the suspension of his license until the  
2 Respondent presents such evidence. The Commissioner shall afford  
3 Respondent the opportunity for a hearing pursuant to the  
4 Administrative Procedure Act to present such evidence.

5 V.

6 Respondent MICHAEL JOSEPH MALONE shall within six (6)  
7 months from the date of issuance of the restricted license, take  
8 and pass the Professional Responsibility Examination administered  
9 by the Department including the payment of the appropriate  
10 examination fee. If Respondent fails to satisfy this condition,  
11 the Commissioner may order suspension of the restricted license  
12 until respondent passes the examination.

13 VI.

14 Respondents license and license rights are indefinitely  
15 suspended unless or until Respondents provide proof satisfactory  
16 to the Commissioner that the trust fund deficit set forth in the  
17 Accusation and in Audit Report LA 070378, in the amount of  
18 \$17,259.60, as of May 10, 2007, has been paid, including the  
19 identification of the source of funds used to pay the deficit.  
20

21  
22  
23 DATED: 5-24-10

24 ELL  
ELLIOTT MAC LENNAN, Counsel for  
the Department of Real Estate

25 ///

26 ///

\* \* \*

EXECUTION OF THE STIPULATION

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

FACSIMILE

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

///

///

DATED: 5/24/10

PACIFICA LUXURY PROPERTIES,  
BY: MICHAEL JOSEPH MALONE,  
Respondent

DATED: 5/24/10

MICHAEL JOSEPH MAJONE, individually  
and as designated officer of  
PACIFICA LUXURY PROPERTIES,  
Respondent

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IT IS SO ORDERED 7/22, 2010.

*[Handwritten signature]*

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**

OCT 28 2009

DEPARTMENT OF REAL ESTATE  
BY: *D. Suarez*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of

No. H-36329 LA

PACIFICA LUXURY PROPERTIES,  
a California Corporation,  
doing business as Re/Max Pacifica,  
Pacifica Escrow Company, Marina  
Pointe Properties, and Pacifica  
Disclosures Services; and  
MICHAEL JOSEPH MALONE, individually  
and as designated officer of  
Pacifica Luxury Properties,

A C C U S A T I O N

Respondents.

The Complainant, Maria Suarez, a Deputy Real Estate  
Commissioner of the State of California, for cause of Accusation  
against PACIFICA LUXURY PROPERTIES, a California corporation dba  
Re/Max Pacifica, Pacifica Escrow Company, Marina Pointe  
Properties, and Pacifica Disclosures Services; and MICHAEL JOSEPH  
MALONE, individually and as designated officer of Pacifica Luxury  
Properties, alleges as follows:

1.

The Complainant, Maria Suarez, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against PACIFICA LUXURY PROPERTIES (PLP) and MICHAEL JOSEPH MALONE (MALONE).

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.

Licensing

3.

a. At all times mentioned, PLP was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate brokers on July 31, 2004.

b. At all times mentioned, MALONE was licensed or had license rights issued by the Department of Real Estate (Department) as restricted real estate broker on March 1, 2006 in Case No. H-32395 LA, as further set forth in Paragraph 13, below.

c. At all times material herein, PLP was licensed by the Department as a corporate restricted real estate broker by and through MALONE, pursuant to Code Sections 10211 and 10159.2 for supervising the activities requiring a real estate license conducted on behalf PLP.

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Brokerage

4.

At all times mentioned, in Century City, County of Los Angeles, PLP and MALONE acted as real estate brokers and conducted licensed activities within the meaning of:

a. Code Section 10131(a). Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker, including the solicitation for listings of and the negotiation of the sale of real property as the agent of others.

b. Code Section 10131(d). Respondents operated a mortgage and loan brokerage engaging in activities with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed and consummated on behalf of others for compensation or in expectation of compensation and for fees often collected in advance as well as at the conclusion of transactions; and

c. In addition, PLP conducted broker-controlled escrows through its escrow division, Pacifica Escrow Company, under the exemption set forth in California Financial Code Section 17006(a)(4) for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required.

FIRST CAUSE OF ACTION

Escrow Audit

5.

On September 30, 2008, the Department completed an audit examination of the books and records of PLP pertaining to the broker escrow activities described in Paragraph 4 that require a real estate license. The audit examination covered a period of time beginning on May 25, 2006 to May 31, 2008. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 070378 and the exhibits and work papers attached to said audit report.

Escrow Trust Accounts

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, PLP accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties, including lenders, borrowers and homeowners, to real estate transactions handled by PLP and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by PLP in the bank account as follows:

///

///

1 "Pacifica Luxury Properties dba Pacifica Escrow Company  
Trust Account  
Account No. 0001-785486"  
2 Mellon 1<sup>st</sup> Business Bank  
3 Los Angeles, CA 90071 (T/A #1)

4  
5 "Pacifica Luxury Properties dba Pacifica Escrow Company  
6 Trust Account  
Account No. 013-409005"  
7 City National Bank  
8 City of Commerce, CA 90040 (T/A #2)

9  
10 Escrow Audit Violations

11 7.

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

16 (a) Permitted, allowed or caused the disbursement of  
17 trust funds from T/A #2, where the disbursement of funds reduced  
18 the total of aggregate funds in escrow trust account, to an  
19 amount which, on May 10, 2007, was \$17,259.60, less than the  
20 existing aggregate trust fund liability of PLP to every principal  
21 who was an owner of said funds, without first obtaining the prior  
22 written consent of the owners of said funds, in violation of Code  
23 Section 10145 and Regulations 2832.1, 2950(g) and 2951.

24 (b) In five discrete disbursements, during the period  
25 from May 25, 2006 to May 10, 2007, permitted, allowed or caused a  
26 total disbursement of trust funds from T/A #2 of \$16,900, without  
27

1 first obtaining the prior written consent of the owners of said  
2 funds, in violation of Code Section 10145 and Regulations 2832.1,  
3 2950(g) and 2951.

4 (c) On May 3, 2007, commingled trust funds and PLP's  
5 operating funds by depositing escrowed trust funds into PLP's  
6 general operating account (884-002672-3) thus commingling said  
7 funds with PLP's own funds, in violation of Code Sections 10145  
8 and 10176(e).

9 (d) Failed to maintain an accurate and complete control  
10 record for each beneficiary or transaction, thereby failing to  
11 account for all trust funds received, deposited and disbursed for  
12 T/A #1, in violation of Code Section 10145 and Regulations 2831,  
13 2950(d) and 2951.

14 (e) Failed to maintain an accurate and complete  
15 separate record for each beneficiary or transaction, thereby  
16 failing to account for all trust funds received, deposited and  
17 disbursed for T/A #1, in violation of Code Section 10145 and  
18 Regulations 2831.1, 2950(d) and 2951.

19 (f) Permitted Michelle Arnold, an unlicensed and under-  
20 bonded person, and PLP's escrow officer, to be an authorized  
21 signatory on T/A #2, in violation of Code Section 10145 and  
22 Regulation 2834, 2950(d) and 2951.

23 (g) Failed to perform a monthly reconciliation of the  
24 balance of all separate beneficiary or transaction records  
25 maintained pursuant to Regulation 2831.1 with the record of all  
26 trust funds received and disbursed by PLP in the conduct of its  
27

escrow operations via Pacifica Escrow Company, in violation of Code Section 10145 and Regulations 2831.2, 2950(d) and 2951.

(h) Failed to disclose in writing to all parties of PLP's financial interest and ownership of PLP's escrow division, Pacifica Escrow Company and alter ego, in violation of Code Sections 10145 and 10176(g) and Regulation 2950(h); and

(i). After notice and request, failed to retain all records of PLP's activity during the audit period requiring a real estate broker license, in violation of Code Section 10148.

Disciplinary Statutes and Regulations - Escrow Audit

8.

The conduct of Respondents PLP and MALONE described in Paragraph 7, above, violated the Code and the Regulations below:

PARAGRAPH

PROVISIONS VIOLATED

7(a)

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

7(b)

Code Section 10145 and Regulations 2950(g) and 2951

7(c)

Code Sections 10145 and 10176(e)

7(d)

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

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| 7(e) | Code Section 10145 and Regulations<br>2831.1, 2950(d) and 2951 |
| 7(f) | Code Section 10145 and Regulations<br>2834, 2950(d) and 2951   |
| 7(g) | Code Section 10145 and Regulations<br>2831.2, 2950(d) and 2951 |
| 7(h) | Code Sections 10145 and 10176(g)<br>and Regulation 2950(h)     |
| 7(i) | Code Section 10148                                             |

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of PLP and MALONE, under the provisions of Code Sections 10176(e), 10176(g), 10177(d) and/or 10177(g).

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9.

Mortgage Loan Trust Account

PLP did not keep a trust account during the audit.

11.

(a) Failed to retain a true and correct copy of a the Department of Real Estate's Mortgage Loan Disclosure Statement, which signed by the broker for borrowers Jesse Shields, Debra Henderson and Antonio Monroy; sets forth all applicable disclosures including but not limited to the name of the broker,

1 PLP, or the name of the loan agent negotiating the loan, in  
2 violation of Code Section 10240 and Regulation 2840.

3 (b) Failed to display the Department's correct license  
4 number on borrowers Jesse Shields, Debra Henderson and Samuel  
5 Castillo's Mortgage Loan Disclosure Statement, in violation of  
6 Code Section 10236.4; and

7 (c) Employed and/or compensated Porche Jackson, as a  
8 loan agent who was not licensed by the Department as a real  
9 estate broker or as a real estate salesperson employed by a real  
10 estate broker, for performing acts for which a real estate  
11 license is required, including soliciting and negotiating  
12 mortgage loans for borrowers Antonio Monroy, Debra Henderson and  
13 Samuel Castillo, wherein Porche Jackson was paid commission  
14 compensation from PLP in total amount of \$11,967.53 in violation  
15 of Code Section 10137.

16 Disciplinary Statutes and Regulations - Mortgage Loan Audit

17 12.

18 The conduct of Respondents PLP and MALONE described in  
19 Paragraph 11 violated the Code and the Regulations below:

| 21 <u>PARAGRAPH</u> | <u>PROVISIONS VIOLATED</u>                   |
|---------------------|----------------------------------------------|
| 22 11(a)            | Code Section 10240 and Regulation<br>23 2840 |
| 24 11(b)            | Code Section 10236.4                         |
| 25 11(c)            | Code Section 10137                           |

1 The foregoing violations constitute cause for the suspension or  
2 revocation of the real estate license and license rights of PLP  
3 and MALONE, under the provisions of Code Sections 10177(d) and/or  
4 10177(g).

5 Prior Department Action

6 13.

7 On January 13, 2006, in Case No. H-32395 LA, a  
8 Statement of Issues was filed against Respondent MICHAEL JOSEPH  
9 MALONE that resulted in stipulated discipline for said Respondent  
10 for violations of Code Section 480 and 10177(b) for failing to  
11 disclose prior misdemeanor conviction for resisting a police  
12 officer and for destruction of a building. Respondent's  
13 application for a real estate broker license was denied with  
14 right to issuance of a restricted real estate broker license,  
15 which was issued on the effective date of the stipulated decision  
16 on February 7, 2006.

17 Negligence

18 14.

19 The overall conduct of Respondents PLP and MALONE  
20 constitutes negligence or incompetence. This conduct and  
21 violation are cause for the suspension or revocation of the real  
22 estate license and license rights of Respondents PLP and MALONE  
23 pursuant to Code Section 10177(g).  
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Broker Supervision

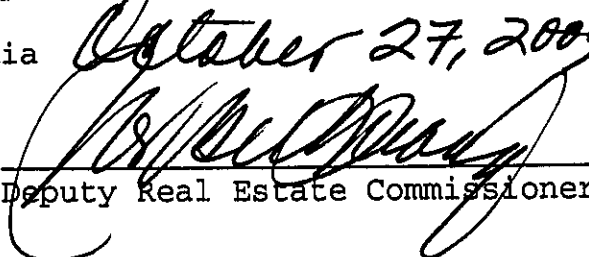
15.

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

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of Respondents PACIFICA LUXURY PROPERTIES and MICHAEL JOSEPH MALONE, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California

this

*October 27, 2009.*  
  
Deputy Real Estate Commissioner

cc: Pacifica Luxury Properties.  
Maria Suarez  
Sacto  
Audits - Chona Soriano