ELLIOTT MAC LENNAN, Counsel (SBN 66674) Bureau of Real Estate 320 W. 4TH Street, Suite 350 Los Angeles, CA 90013-1105 3 Telephone: (213) 576-6982 FILED 5 JAN 20 2015 6 **BUREAU OF REAL ESTATE** 7 8 BEFORE THE BUREAU OF REAL ESTATE 9 STATE OF CALIFORNIA 10 11 In the Matter of the Accusation of DRE No. H-38312LA 12 OAH No. L-2013020465 EASTERN MORTGAGE COMPANY; 13 and **STIPULATION** AND 14 JOHN R. SHAIKIN, individually and as **AGREEMENT** 15 designated officer of Eastern Mortgage Company, 16 Respondents. 17 18 19 It is hereby stipulated by and between Respondents EASTERN MORTGAGE 20 COMPANY and JOHN R. SHAIKIN, individually and as designated officer of Eastern 21 Mortgage Company (sometimes collectively referred to as "Respondents") represented by Mary 22 E. Work, Esq. and the Complainant, acting by and through Elliott Mac Lennan, Counsel for the 23 Bureau of Real Estate, as follows for the purpose of settling and disposing of the Accusation 24 25 filed on August 1, 2012, in this matter:

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- 1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act ("APA") shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement ("Stipulation.")
- Respondents have received, read and understand the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Bureau of Real Estate in this proceeding.
- 3. Respondents timely filed a Notice of Defense pursuant to Section 11506 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents acknowledge that they understand that by withdrawing said Notice of Defense they thereby waive their right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that they will waive other rights afforded to them in connection with the hearing such as the right to present evidence in their defense the right to cross-examine witnesses.
- 4. This Stipulation is based on the factual allegations contained in the Accusation. In the interest of expedience and economy, Respondents choose not to contest these allegations, but to remain silent and understand that, as a result thereof, these factual allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. The Real Estate Commissioner shall not be required to provide further evidence to prove said factual allegations.

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5. This Stipulation is made for the purpose of reaching an agreed disposition of this proceeding and is expressly limited to this proceeding and any other proceeding or case in which the Bureau of Real Estate ("Bureau") or another licensing agency of this state, another state or if the federal government is involved, and otherwise shall not be admissible in any other criminal or civil proceeding.

- 6. It is understood by the parties that the Real Estate Commissioner may adopt this Stipulation as his Decision in this matter thereby imposing the penalty and sanctions on Respondents' real estate licenses and license rights as set forth in the below "Order". In the event that the Commissioner in the Commissioner's discretion does not adopt the Stipulation, the Stipulation shall be void and of no effect and Respondents shall retain the right to a hearing and proceeding on the Accusation under the provisions of the APA and shall not be bound by any stipulation 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 Bureau 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 original audit which led to this disciplinary action. The amount of said cost is \$12,244.95.
- 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 \$12,244.95.

10. Respondent understands that by agreeing to this Stipulation, Respondent agrees to pay, pursuant to Business and Professions Code Section 10106, the cost of the investigation and enforcement of this matter. The amount of said cost is \$6,252.25.

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 EASTERN MORTGAGE COMPANY and JOHN R. SHAIKIN as described in Paragraph 4, above, is in violation of Sections 10145, 10232.4/10232.5, 10236.4(b), 10233(a)/10238(k), 10233(b) and 10233(c) of the Business and Professions Code ("Code") and Sections 2831, 2831.1, 2831.2, 2832.1 and 2834 of Title 10, Chapter 6 of the California Code of Regulations ("Regulations") and is a basis for suspension or revocation of Respondents' license and license rights as a violation of the Real Estate Law pursuant to Code Sections 10177(d) and 10177(g).

II.

The conduct of JOHN R. SHAIKIN, as described in Paragraph 4, above, constitutes a failure to keep EASTERN MORTGAGE COMPANY in compliance with the Real Estate Law during the time that said Respondent was the officer designated by a corporate broker licensee in violation of Code Section 10159.2 and Regulation 2725. This conduct is a basis for the suspension or revocation of Respondent's license pursuant to Code Section 10177(h).

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<u>ORDER</u>

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All licenses and licensing rights of Respondents EASTERN MORTGAGE

COMPANY and JOHN R. SHAIKIN, under the Real Estate Law, are suspended for a period of princety (90) days from the effective date of this Decision:

- A. Provided, however, that if a Respondent requests, the initial thirty (30) days of said suspension (or a portion thereof) shall be stayed for two (2) years upon condition that:
- 1. Respondents pay a monetary penalty pursuant to Section 10175.2 of the

 Business and Professions Code at the rate of \$100 per day for each day of the suspension for a

 monetary penalty of \$3,000 for each Respondent, or \$6,000 total.
- 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 Bureau prior to the effective date of the Decision in this matter.
- 3. No further cause for disciplinary action against the real estate license of Respondents occur 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 part of the stayed suspension, in which event Respondents shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Bureau under the terms of this Decision.
- 5. If Respondents pay the monetary penalty and if no further cause for disciplinary action against the real estate license of a Respondent occurs within two (2) years

B. The remaining sixty (60) days of the ninety (90) day suspension shall be stayed for two (2) years upon the following terms and conditions:

- 1. Respondents shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and
- 2. That no final subsequent determination be made after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years from the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

II.

Pursuant to Section 10148 of the Business and Professions Code, Respondents
EASTERN MORTGAGE COMPANY and JOHN R. SHAIKIN shall pay the Commissioner's reasonable cost for (a) the audit which led to this disciplinary action and (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 \$12,244.95. 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 \$24,489.90. 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 Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

III.

All licenses and licensing rights of Respondents are indefinitely suspended unless or until Respondents pay the sum of \$6,252.25.for the Commissioner's reasonable cost of the investigation and enforcement which led to this disciplinary action. Said payment shall be in the form of a cashier's check made payable to the Real Estate Fund. Said check must be received by the Bureau prior to the effective date of the Order in this matter.

IV.

Respondent JOHN R. SHAIKIN shall within six (6) months from the effective date of the Decision herein, take and pass the Professional Responsibility Examination administered by the Bureau including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

V.

Respondent JOHN R. SHAIKIN shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of

evidence. As a further condition for the Commissioner to enter into this Stipulation,

Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such

VI.

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

VII.

Respondents shall provide evidence satisfactory to the Real Estate Commissioner that all violations set forth below have been corrected prior to the effective date of the Stipulation.

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All proof required by this Order shall be sent to the attention of Elliott Mac

Lennan, Counsel, Legal Section, Bureau of Real Estate, 320 West 4th St., Suite 350, Los Angeles, California 90013-1105.

DATED: 4.18.14

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ELLIOTT MAC LENNAN, Counsel for Bureau of Real Estate

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EXECUTION OF THE STIPULATION

We have read the Stipulation and have discussed it with our attorney. 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 are 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 Bureau at the following facsimile number: Elliott Mac Lennan at (213) 576-6917. Respondents agree, acknowledge and understand that by electronically sending to the Bureau a fax copy of Respondents' actual signature as they appear on the Stipulation, that receipt of the faxed copy by the Bureau shall be as binding on Respondents as if the Bureau had received the original signed Stipulation.

ţ DATED: <u>5/15/14</u> BY: JOHN R. SHAIKIN D.O. Respondent б DATED: <u>5/15/14</u> JOHN R. SHAIKIN, individually and as designated officer of Eastern Morigage Company, Respondent MARY F. WORK, ESQ.
Altorney for Respondents /// /// ///

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The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondents EASTERN MORTGAGE COMPANY and JOHN R. SHAIKIN, individually and as designated officer of Eastern Mortgage Company and shall become effective at 12 o'clock FEB 0 9 2015 JAN 05 2015 IT IS SO ORDERED REAL ESTATE COMMISSIONER

> By: JEFFREY MASON Chief Deputy Commissioner