

FILED

OCT 31 2018

DEPT. OF REAL ESTATE
By *Angela Danner*

1 Department of Real Estate
320 W. 4th Street, Suite 350
2 Los Angeles, CA 90013-1105
Telephone: (213) 576-6982

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8 **BEFORE THE DEPARTMENT OF REAL ESTATE¹**
9 **STATE OF CALIFORNIA**

10 *******

11 In the Matter of the Accusation against)
12 **FRED EUGENE DOTERRER,**)
13 **Respondent.**)

DRE No. H-40879 LA
OAH No. 2018010442

**STIPULATION AND AGREEMENT AND
DECISION AFTER REJECTION**

14
15 **The California Department of Real Estate ("Department") filed an Accusation**
16 **against FRED EUGENE DOTERRER ("Respondent") on December 8, 2017. A First**
17 **Amended Accusation was filed and served on May 9, 2018. This matter came for hearing before**
18 **Kimberly J. Belvedere, Administrative Law Judge ("ALJ") of the Office of Administrative**
19 **Hearings ("OAH"), in San Bernardino, California on July 10, 2018. Lissete Garcia, Counsel,**
20 **represented the Complainant, Maria Suarez, Supervising Special Investigator for the State of**
21 **California Department of Real Estate. Respondent appeared in person, and was represented by**
22 **attorney Daniel K. Gentile, Esq. Oral and documentary evidence was received and the matter**
23 **was submitted that same day.**

24 **On August 6, 2018, the ALJ issued a Proposed Decision, which the Real Estate**
25 **Commissioner ("Commissioner") declined to adopt.**

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27 ¹ Between July 1, 2013 and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate under the Department of Consumer Affairs.

1 Pursuant to California Government Code section 11517(c), Respondent was
2 served with notice of my determination not to adopt the Proposed Decision of the Administrative
3 Law Judge along with a copy of said Proposed Decision.

4 THE PARTIES HERETO NOW STIPULATE as follows for the purpose of
5 settling and disposing of the First Amended Accusation ("Accusation") filed on May 9, 2018, in
6 this matter:

7 1. This Stipulation is based on the factual allegations contained in the Accusation
8 filed in this proceeding. In the interest of expedience and economy, Respondent chooses not to
9 contest these factual allegations, and understands that, as a result thereof, these factual statements
10 will serve as a prima facie basis for the disciplinary action stipulated to herein. The Real Estate
11 Commissioner shall not be required to provide further evidence to prove such allegations.

12 2. Respondent further acknowledges that the Real Estate Commissioner held a
13 hearing on this Accusation on July 10, 2018, before the Office of Administrative Hearings for
14 the purpose of proving the allegations therein. Respondent was present at the hearing and
15 participated therein. Further, Respondent has had an opportunity to read and review the
16 Proposed Decision of the Administrative Law Judge.

17 3. Respondent understands that pursuant to Government Code Section 11517(c),
18 the Real Estate Commissioner has rejected the Proposed Decision of the Administrative Law
19 Judge. Respondent further understands that pursuant to the same Section 11517(c), the Real
20 Estate Commissioner may decide this case upon the record, including the transcript, without
21 taking any additional evidence, after affording Respondent the opportunity to present written
22 argument to the Real Estate Commissioner.

23 4. Respondent further understands that by signing this Stipulation and
24 Agreement, Respondent is waiving his right to seek a dismissal of the Accusation through
25 proceedings under Government Code Section 11517(c) if this Stipulation and Agreement
26 ("Stipulation") is accepted by the Real Estate Commissioner.
27

1 5. It is understood by the parties that the Real Estate Commissioner may adopt
2 this Stipulation as his Decision in this matter thereby imposing the penalty and sanctions on
3 Respondent's real estate license and license rights as set forth in the below "Order." In the event
4 that the Commissioner in his discretion does not adopt the Stipulation, the Stipulation shall be
5 void and of no effect and Respondent shall retain the right to further proceedings under the
6 Administrative Procedure Act (beginning at Government Code Section 11500).

7 6. The Order or any subsequent Order of the Real Estate Commissioner made
8 pursuant to this Stipulation shall not constitute an estoppel, merger or bar to any further
9 administrative or civil proceedings by the Bureau of Real Estate with respect to any matters
10 which were not specifically alleged to be causes for accusation in this proceeding.

11 7. It is understood by the parties that the Commissioner may adopt the Stipulation
12 and Agreement and Decision After Rejection as his decision in this matter, thereby revoking
13 Respondent's real estate salesperson license and license rights; provided, however, Respondent
14 is issued a restricted broker license. In the event the Commissioner in his discretion does not
15 adopt the Stipulation, the Stipulation shall be void and of no effect; the Commissioner will
16 review the transcript and the evidence in the case, and will issue his Decision after Rejection as
17 his Decision in this matter.

18 8. By reason of the foregoing and solely for the purpose of settlement of the
19 Accusation without further administrative proceedings, it is stipulated and agreed that the
20 following shall be adopted as the Commissioner's Decision:

21 DETERMINATION OF ISSUES

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

24 The conduct of FRED EUGENE DOTERRER as described in the Accusation is
25 grounds for the suspension or revocation of all of the real estate licenses and license rights of
26 Respondent under the provision of Sections 10165, 10177(g), and 10177(k) of the California
27 Business and Professions Code ("Code") for violation of Code sections 10145(a)(1), 10163,

1 10159.5, and Regulations 2832.1, 2831, 2831.1, 2831.2, 2731(a), and 2715.

2 **ORDER**

3 **WHEREFORE, THE FOLLOWING ORDER is hereby made:**

4 All licenses and licensed rights of Respondent FRED EUGENE DOTERRER
5 under the Real Estate Law are revoked; provided, however, a restricted real estate broker license
6 shall be issued to Respondent pursuant to Section 10156.5 of the Code if Respondent makes
7 application therefor and pays to the Department of Real Estate the appropriate fee for the
8 restricted license within 90 days from the effective date of this Decision. The restricted license
9 issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business
10 and Professions Code and to the following limitations, conditions and restrictions imposed under
11 authority of Section 10156.6 of that Code:

12 1. The restricted license issued to Respondent may be suspended prior to hearing
13 by Order of the Real Estate Commissioner in the event of either Respondent's conviction or plea
14 of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as
15 a real estate licensee.

16 2. The restricted license issued to Respondent may be suspended prior to hearing
17 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
18 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
19 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
20 license.

21 3. Respondent shall not be eligible to petition for the issuance of any unrestricted
22 real estate licenses nor for removal of any of the conditions, limitations or restrictions of a
23 restricted license until three (3) years have elapsed from the effective date of this Decision and
24 Order. Respondent shall not be eligible to apply for any unrestricted licenses until all restrictions
25 attaching to the license have been removed.

26 4. Respondent shall within 120 days from the effective date of the Decision
27 and Order herein submit proof satisfactory to the Commissioner of having taken and successfully

1 completed the continuing education course on trust fund accounting and handling specified in
2 paragraph (3) of subdivision (a) of Section 10170.5 of the Code. If Respondent fails to satisfy
3 this condition, Respondent's real estate license shall be automatically suspended until he presents
4 evidence satisfactory to the Commissioner of having taken and successfully completed the trust
5 fund accounting and handling course. **Proof of completion of the continuing education course**
6 **must be delivered to the Department of Real Estate, Flag Section, P.O. Box 137013,**
7 **Sacramento, CA 95813-7013.**

8 5. Pursuant to Section 10148 of the Business and Professions Code, Respondent
9 shall pay the Commissioner's reasonable costs for the investigation, enforcement, and audit
10 which led to this disciplinary action in the amount of \$7,437.85. **Respondent shall pay such**
11 **cost within ninety (90) days of receiving an invoice therefore from the Commissioner.**
12 **Payment of the audit costs should not be made until Respondent receives the invoice. If**
13 **Respondent fails to satisfy this condition in a timely manner as provided for herein,**
14 **Respondent's real estate licenses shall automatically be suspended until payment is made in full,**
15 **or until a decision providing otherwise is adopted following a hearing held pursuant to this**
16 **condition.**

17 6. Pursuant to Section 10148 of the Code, Respondent shall pay the
18 **Commissioner's reasonable cost, not to exceed \$9,297.31, for a subsequent audit to determine if**
19 **Respondent has corrected the violations found in the Determination of Issues. In calculating the**
20 **amount of the Commissioner's reasonable cost, the Commissioner may use the estimated**
21 **average hourly salary for all persons performing audits of real estate brokers, and shall include**
22 **an allocation for travel time to and from the auditor's place of work. Respondent shall pay**
23 **such cost within sixty (60) days of receiving an invoice therefor from the Commissioner.**
24 **Payment of the audit costs should not be made until Respondent receives the invoice. If**
25 **Respondent fails to satisfy this condition in a timely manner as provided for herein,**
26 **Respondent's real estate licenses shall automatically be suspended until payment is made in full,**
27 **or until a decision providing otherwise is adopted following a hearing held pursuant to this**

1 condition.

2 7. Respondent shall, within six (6) months from the effective date of this
3 Decision and Order, take and pass the Professional Responsibility Examination administered by
4 the Department including the payment of the appropriate examination fee. If Respondent fails to
5 satisfy this condition, Respondent's real estate license shall automatically be suspended until
6 Respondent passes the examination.

7 8. Respondent shall, within nine (9) months from the effective date of this
8 Decision and Order, present evidence satisfactory to the Commissioner that Respondent has,
9 since the most recent issuance of an original or renewal real estate license, taken and successfully
10 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
11 Law for renewal of a real estate license. If Respondent fails to satisfy this condition,
12 Respondent's real estate license shall automatically be suspended until Respondent presents
13 evidence satisfactory to the Commissioner of having taken and successfully completed the
14 continuing education requirements. Proof of completion of the continuing education courses
15 must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013,
16 Sacramento, CA 95813-7013.

17 If Respondent fails to satisfy this condition in a timely manner as provided for
18 herein, Respondent's real estate licenses shall automatically be suspended until payment is made
19 in full, or until a decision providing otherwise is adopted following a hearing held pursuant to
20 this condition.

21 DATED: _____

22 Lissete Garcia, Counsel for
23 Department of Real Estate

24 * * *

25 EXECUTION OF THE STIPULATION

26 I have read the Stipulation and Agreement and Decision after Rejection, and its
27 terms are understood by me and are agreeable and acceptable to me. I willingly and voluntarily
agree to enter into this Stipulation and Agreement and Decision after Rejection.

1 Respondent can signify acceptance and approval of the terms and conditions of
2 this Stipulation and Agreement by electronically emailing a copy of the signature page, as
3 actually signed by Respondent, to the Department. Respondent agrees acknowledges, and
4 understands that by electronically sending to the Department an electronic copy of Respondent's
5 actual signature as it appears on the Stipulation, that receipt of the emailed copy by the
6 Department shall be as binding on Respondent as if the Department had received the original
7 signed Stipulation. By signing this Stipulation, Respondent understands and agrees that
8 Respondent may not withdraw this agreement or seek to rescind the Stipulation prior to the time
9 the Commissioner considers and acts upon it or prior to the effective date of the Stipulation and
10 Order.

11 Respondent agrees, acknowledges and understands that by signing this Stipulation
12 and Agreement and Decision after Rejection Respondent is bound by its terms as of the date of
13 such signature and that such agreement is not subject to rescission or amendment at a later date
14 except by a separate Decision and Order of the Commissioner.

15 **MAILING**

16 Respondent and Respondent's attorney shall mail the original signed signature
17 page(s) of the stipulation herein, within five (5) business days of signing the Stipulation, to
18 Lissete Garcia: Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Suite
19 350, Los Angeles, California 90013-1105.

21 DATED: 10.22.18

Fred Eugene Dotterrer
FRED EUGENE DOTERRER
Respondent

25 DATED: _____

Daniel K. Gentile
Counsel for Respondent
Approved as to Form


1 condition.

2 7. Respondent shall, **within six (6) months from the effective date of this**
3 **Decision and Order, take and pass the Professional Responsibility Examination administered by**
4 **the Department including the payment of the appropriate examination fee. If Respondent fails to**
5 **satisfy this condition, Respondent's real estate license shall automatically be suspended until**
6 **Respondent passes the examination.**

7 8. Respondent shall, **within nine (9) months from the effective date of this**
8 **Decision and Order, present evidence satisfactory to the Commissioner that Respondent has,**
9 **since the most recent issuance of an original or renewal real estate license, taken and successfully**
10 **completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate**
11 **Law for renewal of a real estate license. If Respondent fails to satisfy this condition,**
12 **Respondent's real estate license shall automatically be suspended until Respondent presents**
13 **evidence satisfactory to the Commissioner of having taken and successfully completed the**
14 **continuing education requirements. Proof of completion of the continuing education courses**
15 **must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013,**
16 **Sacramento, CA 95813-7013.**

17 If Respondent fails to satisfy this condition in a timely manner as provided for
18 herein, Respondent's real estate licenses shall automatically be suspended until payment is made
19 in full, or until a decision providing otherwise is adopted following a hearing held pursuant to
20 this condition.

21 DATED: 10/24/2018



Lissete Garcia, Counsel for
Department of Real Estate

22
23 * * *

24 **EXECUTION OF THE STIPULATION**

25 I have read the Stipulation and Agreement and Decision after Rejection, and its
26 terms are understood by me and are agreeable and acceptable to me. I willingly and voluntarily
27 agree to enter into this Stipulation and Agreement and Decision after Rejection.

1 Respondent can signify acceptance and approval of the terms and conditions of
2 this Stipulation and Agreement by electronically emailing a copy of the signature page, as
3 actually signed by Respondent, to the Department. Respondent agrees acknowledges, and
4 understands that by electronically sending to the Department an electronic copy of Respondent's
5 actual signature as it appears on the Stipulation, that receipt of the emailed copy by the
6 Department shall be as binding on Respondent as if the Department had received the original
7 signed Stipulation. By signing this Stipulation, Respondent understands and agrees that
8 Respondent may not withdraw this agreement or seek to rescind the Stipulation prior to the time
9 the Commissioner considers and acts upon it or prior to the effective date of the Stipulation and
10 Order.

11 Respondent agrees, acknowledges and understands that by signing this Stipulation
12 and Agreement and Decision after Rejection Respondent is bound by its terms as of the date of
13 such signature and that such agreement is not subject to rescission or amendment at a later date
14 except by a separate Decision and Order of the Commissioner.

15 **MAILING**

16 Respondent and Respondent's attorney shall mail the original signed signature
17 page(s) of the stipulation herein, within five (5) business days of signing the Stipulation, to
18 Lissete Garcia: Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Suite
19 350, Los Angeles, California 90013-1105.

21 DATED: _____

24 DATED: Dec 22, 2018

22 **FRED EUGENE DOTERRER**
23 Respondent

25 
26 Daniel K. Gentile
27 Counsel for Respondent
Approved as to Form

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I have read the Accusation filed herein, the Proposed Decision of the Administrative Law Judge dated August 6, 2018, and the foregoing Stipulation and Agreement signed by Respondent. I am satisfied that it will not be inimical to the public interest to issue a restricted broker license to Respondent.

Therefore, IT IS HEREBY ORDERED that the real estate broker license of Respondent FRED EUGENE DOTERRER be revoked and a restricted real estate broker license be issued to Respondent if Respondent has otherwise fulfilled all of the statutory requirements for licensure. The restricted license shall be limited, conditioned and restricted as specified in the foregoing Stipulation and Agreement.

This Decision shall become effective at 12 o'clock noon on **NOV 19 2018**
IT IS SO ORDERED *October 30, 2018*

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER



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DEPARTMENT OF REAL ESTATE

By *Sybil Steiner*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalDRE No. H-40879 LA
FRED EUGENE DOTTERRER,)	
Respondent.)	OAH No. 2018010442

NOTICE

TO: FRED EUGENE DOTTERRER, Respondent, and DANIEL GENTILE , his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 6, 2018, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 6, 2018, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Thursday, July 12, 2018, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Thursday, July 12, 2018, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good

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cause shown.

Written argument of complainant to be considered by me must be submitted within 15 days after receipt of the argument of respondent at the Los Angeles Office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: August 31, 2018.

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation Against:

FRED EUGENE DOTERRER,

Broker License No. B/0115261

Respondent.

Case No. H-40879 LA

OAH No. 2018010442

PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 10, 2018, 2016, in San Bernardino, California.

Lissette Garcia, Real Estate Counsel, represented complainant, Maria Auarez, Supervising Special Investigator, Department of Real Estate¹, State of California.

Daniel Gentile, Pope & Gentile, APC, represented respondent Fred Eugene Dotterrer, who was present.

The matter was submitted on July 10, 2018.

PROTECTIVE ORDER SEALING CONFIDENTIAL RECORDS

Exhibits 11 through 14 were admitted into evidence and contain confidential information regarding bank accounts. It is impractical to delete the information from these exhibits. To protect privacy and confidential information from inappropriate disclosure, Exhibits 11 through 14 are ordered sealed. This order governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517, may review the

¹ Effective July 1, 2018, Business and Professions Code section 10050 was amended by Senate Bill 173 to remove the "Bureau of Real Estate" from the Department of Consumer Affairs and rename it to the "Department of Real Estate, which is now within the Housing, Consumer Services, and Protection Agency.

documents subject to this order, provided that such documents are protected from release to the public.

FACTUAL FINDINGS

Background

1. The department issued real estate broker license number B/0115261 to respondent on January 10, 1994.
2. Respondent had one prior incidence of discipline against his license in 1999 as follows: On July 13, 1999, the department filed an Accusation against respondent alleging various trust account violations, recordkeeping violations, and using fictitious business names without having first obtained a license from the department. Pursuant to a Stipulation and Agreement dated September 17, 1999, the department revoked respondent's license; issued a restricted license subject to various terms, conditions, and limitations; and permitted respondent to apply for an unrestricted license one year following the effective date of the decision and order. One of the conditions of the restricted license was that he not violate any statute or regulation pertaining to real estate law (Condition No. 2.)
3. To date, respondent has never applied for an unrestricted real estate broker license. According to respondent, there are audits and other investigations that the department conducts when a person applies to change a restricted license to an unrestricted license; it is a hassle to do so; and he does not need an unrestricted license to conduct the business he conducts. Thus, respondent's real estate broker license has been restricted for 19 years. It will expire on November 11, 2019, unless renewed.

First Amended Accusation

4. On May 7, 2018, complainant filed the First Amended Accusation in this matter, alleging the following violations as a basis for discipline:
 - Issue One (trust account deficiency in the amount of \$1,912.52)
 - Issue Two (trust account deficiency in the amount of \$27,412.28)
 - Issue Three (failure to maintain complete/accurate trust account records)
 - Issue Four (failure to maintain accurate separate records)
 - Issue Five (unauthorized disbursements/acceptance of unearned fees)
 - Issue Six (failed to perform a monthly reconciliation)
 - Issue Seven (use of unlicensed/false fictitious business name)
 - Issue Eight (unlicensed branch offices)
 - Issue Nine (failure to supervise activities of employees in relation to handling of client trust accounts)

5. Respondent timely filed a notice of defense and this hearing ensued.

Testimony of Samuel Delgado (Relating to Allegations in Paragraphs 10G and 10H of the First Amended Accusation)

6. Mr. Delgado is a special investigator with the department. His testimony is summarized as follows. He testified concerning the allegations that respondent was doing business under an unlicensed name and at an unlicensed location. He referred to internet advertising pages dated December 9, 2016, which showed respondent was conducting property management business under the names All Gold Property Management and Priority One Property Management. At the time, respondent was only licensed to do business as Priority One Property Management. Respondent was also conducting business at 15419 Anacapa Road, Victorville, California. Since 2011, respondent's main office address was registered as 9648 9th Avenue in Hesperia, California, and he had no branch offices registered. Documentation obtained during the investigation also showed respondent had the name All Gold Property Management and Victorville address listed on leases he negotiated at a time when neither the name or address were registered with the department, and also held bank accounts in that name at a time when he was not licensed to do business as All Gold Property Management. Respondent finally registered All Gold Property Management and listed the Victorville address as his main office on February 6, 2017.

Testimony of Godswill Keraoru

7. Mr. Keraoru is an auditor with the department, and has an extensive background in accounting. On January 25, 2017, Supervising Auditor Chona Soriano sent a letter to respondent requesting bank statements for all trust fund and general accounts used in connection with the property management activities; trust fund records of receipts and disbursements; separate records for each beneficiary transaction; bank reconciliations and trust fund reconciliations; copies of signature cards for all trust accounts; cancelled checks and deposits for all accounts; record of trust funds received not placed in the trust account; licenses and broker-salesperson agreements; invoices; property management transaction files and agreements; and other documents as requested. The letter did not specify a time period for the records to be provided, but Mr. Keraoru testified that the audit included a time period from January 1, 2015, to January 31, 2017. Respondent was cooperative in providing the documents requested.

Trust account number one (TA1) is with the Desert Community Bank, and the last four numbers on the account were 0802. Trust account number two (TA2) is with Citizens Business Bank, and the last four numbers on the account are 1672. Trust account number three (TA3) is with Citizens Business Bank, and the last four numbers on the account are 1696.

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ALLEGATIONS RELATING TO PARAGRAPH 10A (TA1)

8. Mr. Keraoru audited TA1. He performed a bank reconciliation and examined bank statements, records of deposits, outstanding checks, and other items. During the audit it is assumed that all checks written have been presented. Mr. Keraoru found a shortage in the account of \$1,912.52. Mr. Keraoru testified that since there is one trust account that contains monies for multiple beneficiaries, respondent is not permitted to allow the account to dip into a negative balance. He could not, however, determine what caused the shortage. Maintaining a negative account balance is problematic because if all clients requested their money at the same time, there would be insufficient funds to pay each client. There was no evidence that respondent obtained the written consent of every principal who is an owner of the funds in TA1 agreeing to any disbursement that would reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.

ALLEGATIONS RELATING TO PARAGRAPH 10B, 10C, AND 10E (TA2 AND TA3)

9. Mr. Keraoru audited TA2. He performed a bank reconciliation and examined bank statements, records of deposits, outstanding checks, and other items. During the audit it is assumed that all checks written have been presented. Respondent did not have a separate record for each account. Mr. Keraoru found a shortage in the account of \$27,412.28. Mr. Keraoru testified that respondent had been taking his management fees of \$20,000 per month before they were earned; in other words, not all rents had come in but he took the monthly fee anyway. Mr. Keraoru's report showed that there were four disbursements in the amount of \$20,000 as follows: 01/27/17 – Check number 16320 (February 2017), 12/19/16 – Check number 16049 (January 2017), 11/28/16 – Check number 15817 (December 2016), and 10/31/16 – Check number 15568 (November 2016). However, it was assumed that the payments were made in the month prior to being earned; responded contended that the checks were written after the fees were earned. Taking out the alleged unearned fee amount of \$20,000, a shortage of \$7,412.28 remained. \$747 of the shortage related to disbursements in connection with a property in Victorville. \$914.05 of the shortage related to unreimbursed bank charges. \$2,778.97 of the shortage could not be explained. There was no evidence that respondent obtained the written consent of every principal who is an owner of the funds in TA1 agreeing to any disbursement that would reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.

During the audit of TA2, Mr. Keraoru also found that respondent did not have accurate separate control records for the property in Victorville, which showed a shortage of \$914.05. Specifically, some transactions were not recorded, leading to an inaccurate daily balance. Similarly, for TA3, respondent's control records were incomplete because they did not reflect trust funds to date of receipt, date of deposit, date checks were disbursed, and a current running daily balance. Mr. Keraoru's report detailed examples of the problems with TA1 and TA2, consistent with his testimony.

ALLEGATIONS RELATING TO PARAGRAPH 10D (TA2)

10. Mr. Keraoru explained that a licensee or broker is expected to maintain separate records for each of the property owners who have balances in a given trust account so that if any one owner wanted to know what is in their "account" at any given time, it could be easily determined. During the audit of TA2, Mr. Keraoru identified a shortage of \$2,778.97 in TA2 that he could not account for as noted above; and the separate records reviewed also did not account for that shortage.

ALLEGATIONS RELATING TO PARAGRAPH 10F (TA2)

11. Mr. Keraoru testified that, based on the shortages noted in TA1 and TA2, respondent violated the provisions that require him to properly and accurately reconcile each account. Every item in and out of a trust account must be accounted for; a portion of the shortage in TA1 and TA2 were unexplained.

ALLEGATIONS RELATING TO PARAGRAPH 10I

12. Mr. Keraoru testified that real estate brokers are required to maintain written policies and procedures to ensure compliance with real estate law. Mr. Keraoru testified that he asked respondent if he had a policy manual, but respondent did not. Mr. Keraoru did not ask respondent about any training he may have provided to employees, or if respondent had any discussions with employees about how to maintain client trust accounts.

Respondent's Testimony

13. Respondent's testimony is summarized as follows.

Respondent has been a licensed broker since 1993. He operates All Gold Property Management and Priority One Property Management. All Gold Property Management has existed since 2011; Priority One Property Management has existed since 1993 when he first became licensed. He recently began operating out of an office in Pismo Beach; he has registered that branch office with the department. He did register the All Gold Property Management with the county, but "neglected" to register the name or branch office with the department until February 2017, when he was told to do so as a result of this investigation.

Respondent is responsible for approximately 400 properties. He has 10 employees, including one employee that handles bookkeeping at each business. He utilizes the PROMAS software, a universally recognized property management software to assist with banking and trust account management. Although a person can manually perform bank account reconciliations, the software has a feature to handle it for you. Both of his employees who handle the bank records at each business were trained in the PROMAS program. One employee actually took a class.

Respondent believes his employees have adequate supervision. He does have a single-paged rule and regulation document, but he said Mr. Keraoru never requested it. Respondent is at one of his offices on a daily basis and is available for contact if needed.

Respondent has discussed the noted discrepancies with his employees. Everything has been fixed as far as the accounts are concerned, but he is still unclear how the accounts resulted in a negative balance as described by Mr. Keraoru. He even had the PROMAS personnel at that company check the accounts, and they could not determine that there was a problem. Respondent said that although the department found shortages, the software did not.

Respondent never takes management fees prior to being earned (i.e. prior to rents being collected). Regarding the four \$20,000 withdrawals noted in TA2, respondent said those payments were made on that date, but they were not for rents paid in that month; those were fees earned as a result of the prior month. Respondent only takes one check a month and although the incomes do vary, it is "pretty steady" that he earns \$20,000 per month.

Respondent said he has never had a complaint about a bank account problem (outside of his prior discipline). Regarding his prior discipline, it occurred because of a dispute over the sale of a house. The complaint was dismissed but he was audited by the department, which resulted in trust account violations. However, nobody was harmed and ultimately, the prior discipline caused him to be more proactive in his trust account management.

Although respondent's license has been in restricted status since the prior discipline, he has never had another disciplinary problem. Respondent said he never applied for an unrestricted license because of the process, calling it a "hassle," and explained that since he can do all he needs to do on the restricted license, he never saw the need.

Costs of Investigation and Enforcement

14. Business and Professions Code section 10106 authorizes complainant to seek recovery of the reasonable costs of investigation and enforcement in disciplinary matters. Business and Professions Code section 10148, subdivision (b), provides that complainant may charge a real estate broker the cost of any audit conducted if discipline is imposed based on violations relating to client trust accounts set forth in Business and Professions Code section 10145 and regulations interpreting that section.²

² Business and Professions Code section 10148, subdivision (b), specifically provides:

The commissioner shall charge a real estate broker for the cost of any audit, if the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker

Complainant submitted a certified statement of investigation costs. The certification identified all work completed by each employee, the title of each employee, the hourly rate of each employee, and a detailed breakdown regarding the hours spent by each employee on a specific task. The certification reflects that the total amount of investigative costs billed in this matter are \$918.20.

Complainant submitted a certified statement of enforcement costs. The certification specified all activities performed in connection with preparation of the case leading up to hearing, along with the time spent preparing for hearing at an hourly rate of \$89. The total hours spent in connection with the enforcement of this matter was 43 hours, and the total amount of enforcement costs billed was \$3,827.

The investigation and enforcement certifications satisfied the requirements of California Code of Regulations, title 1, section 1042, subdivision (b), and support a finding that costs in the amount of \$4,745.20 are reasonable.

Complainant submitted a certified statement of audit costs. The certification identified 173 hours of audit work performed at a rate of \$53 per hour for the actual audit (\$9,169); 3.5 hours of supervising auditor work at \$77 per hour (\$269.50); and 672 miles of travel billed at a rate of \$0.535 per mile (\$359.52). During his testimony, Mr. Keraoru identified two large banker's boxes full of records as the records he utilized in his audit. His audit report identified voluminous documents reviewed during the audit, including bank records, signature cards, trust account ledgers, invoiced and cancelled checks, reconciliation records, property management agreements, and other financial documents. 173 hours of work and 3.5 of supervisor work to review Mr. Keraoru's final audit report is reasonable and comply with California Code of Regulations, title 1, section 1042, subdivision (b). However, Business and Professions Code section 10148, subdivision (b), does not state whether travel is included in the "cost of any audit." Even if travel costs were permitted, the certification did not state why the extensive amount of mileage was required, where employees travelled, or the dates employees traveled. In sum, it is not ascertainable from the certification whether the travel costs are reasonable. Therefore, the travel costs of \$359.52 are disallowed.

15. The total reasonable costs imposed in connection with this matter are therefore determined to be \$14,183.70.

16. Respondent did not state whether he is financially unable to pay any costs should disciplinary action be imposed.

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has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proving by clear and convincing evidence that the allegations in the accusation are true. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) This standard requires the production of evidence sufficiently strong to command the unhesitating assent of every reasonable mind. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

Applicable Code Sections

VIOLATIONS OF TRUST ACCOUNT AND OTHER PROVISIONS

2. Business and Professions Code section 10145 provides that a real estate broker who accepts funds belonging to others in connection with a transaction shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

3. Business and Professions Code section 10159.5, subdivision (a)(1), provides:

Every person applying for a license under this chapter who desires to have the license issued under a fictitious business name shall file with his or her application a certified copy of his or her fictitious business name statement filed with the county clerk

4. Business and Professions Code section 10163, provides:

If the applicant for a real estate broker's license maintains more than one place of business within the State he shall apply for and procure an additional license for each branch office so maintained by him. . . .

DISCIPLINARY PROVISIONS

5. The commissioner may suspend or revoke a license for a violation of any of the provisions of Business and Professions Code sections 10160, 10161.8, 10162, 10163, or 10164, subdivision (b). (Bus. & Prof. Code, § 10165.)

6. The Commissioner may suspend or revoke a license for any willful disregard of the statutes or regulations pertaining to real estate law. (Bus. & Prof. Code, § 10177, subd. (d).)

7. The Commissioner may suspend or revoke a license for demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license. (Bus. & Prof. Code, § 10177, subd. (g).)

8. The Commissioner may suspend or revoke a license if a licensee fails to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required. (Bus. & Prof. Code, § 10177, subd. (h).)

9. The Commissioner may suspend or revoke any real estate license for conduct that constitutes fraud or dishonest dealing. (Bus. & Prof. Code, § 10176, subd. (i).)

10. The Commissioner may suspend or revoke any real estate license if a licensee violates any of the terms, conditions, restrictions, and limitations contained in an order granting a restricted license. (Bus. & Prof. Code, § 10177, subd. (k).)

11. When evaluating the rehabilitation of a licensee who has been convicted of a crime or the commission of some other wrongful act, California Code of Regulations, title 10, section 2183.4, provides that the commissioner may consider the following: nature and severity of the misconduct; time that has elapsed since the misconduct; and whether the licensee has made any restitution or done anything to alleviate the wrong or damage caused by the wrongful act.³

Applicable Regulation Sections

12. California Code of Regulations, title 10, section 2715, provides:

Every real estate broker, except a broker acting in the capacity of a salesperson to another broker under written agreement, shall maintain on file with the commissioner the address of his or her principal place of business for brokerage activities, the address of each branch business office and his or her current mailing address, if different from the business address.

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³ Several factors in this regulation are inapplicable as they pertain to convictions only, so they were omitted.

13. California Code of Regulations, title 10, section 2725, provides:

A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

- (a) Transactions requiring a real estate license.
- (b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.
- (c) Filing, storage and maintenance of such documents.
- (d) The handling of trust funds.
- (e) Advertising of any service for which a license is required.
- (f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.
- (g) Regular and consistent reports of licensed activities of salespersons.

The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices.

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

14. California Code of Regulations, title 10, section 2731, subdivision (a), provides that a licensee "shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name."

15. California Code of Regulations, title 10, section 2831, provides:

- (a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under

an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

- (1) Date trust funds received.
 - (2) From whom trust funds received.
 - (3) Amount received.
 - (4) With respect to funds deposited in an account, date of said deposit.
 - (5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
 - (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.
 - (7) Daily balance of said account.
- (b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).
- (c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.
- (d) Nothing in this section shall be construed to permit a violation of Section 10145 of the Code.
- (e) A broker is not required to keep records pursuant to this section of checks which are written by a principal, given to the broker and made payable to third parties for the provision of services, including but not limited to escrow, credit and appraisal services, when the total amount of such checks for any transaction from that principal does not exceed \$1,000. Upon

request of the Bureau or the maker of such checks, a broker shall account for the receipt and distribution of such checks. A broker shall retain for three years copies of receipts issued or obtained in connection with the receipt and distribution of such checks.

16. California Code of Regulations, title 10, section 2831.1, provides:

(a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

- (1) Date of deposit.
- (2) Amount of deposit.
- (3) Date of each related disbursement.
- (4) Check number of each related disbursement.
- (5) Amount of each related disbursement.
- (6) If applicable, dates and amounts of interest earned and credited to the account.
- (7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

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17. California Code of Regulations, title 10, section 2831.2, provides:

The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

18. California Code of Regulations, title 10, section 2832.1, provides:

The written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.

Evaluation of Allegations

19. Issue One (trust account deficiency in the amount of \$1,912.52) – paragraph 10(a) of the First Amended Accusation: Clear and convincing evidence established that respondent violated Business and Professions Code section 10145, subdivision (a)(1), and California Code of Regulations, title 10, section 2832.1. During the audit period, TA1 was determined to be short by \$1,912.52. There was no written agreement from all owners of the funds in TA1 consenting to any disbursement that would reduce the funds in the account. There was no explanation for the shortage.

20. Issue Two (trust account deficiency in the amount of \$27,412.28) – paragraph 10(b) of the First Amended Accusation: Clear and convincing evidence established that respondent violated Business and Professions Code section 10145, subdivision (a)(1), and California Code of Regulations, title 10, section 2832.1. During the audit period, TA2 was determined to be short by \$27,412.28. It is determined that respondent did not take out unearned fees, reducing that amount to \$7,412.28. Nonetheless, this is still a shortage. There was no written agreement from all owners of the funds in TA2 consenting to any disbursement that would reduce the funds in the account. There was no explanation for the shortage.

21. Issue Three (failure to maintain complete/accurate trust account records) – paragraph 10(c) of the First Amended Accusation: Clear and convincing evidence

established that respondent violated Business and Professions Code section 10145, subdivision (a)(1), and California Code of Regulations, title 10, section 2831. Respondent did not keep accurate records for TA2 and TA3.

22. Issue Four (failure to maintain accurate separate records) – paragraph 10(d) of the First Amended Accusation: Clear and convincing evidence established that respondent violated Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.1. Respondent had a shortage of \$2,778.97 in TA2 during the audit period, and neither the main trust account record nor separate records reviewed accounted for that shortage.

23. Issue Five (unauthorized disbursements/acceptance of unearned fees) – paragraph 10(e) of the First Amended Accusation: Clear and convincing evidence did not establish that respondent took unauthorized distributions or withdrew fees from TA2 that had not been earned, in violation of Business and Professions Code sections 10145; 10176, subdivision (i); or 10177, subdivision (j). During the investigation, it was assumed that the fees were withdrawn for the month in which they were earned, which would have meant respondent accepted the fees early for months of October 2016, November 2016, December 2016, and January 2017. Respondent testified, however, that the withdrawals for each month were for fees earned in the prior month. There was no evidence of misappropriation, fraud, or dishonest dealing. Insufficient evidence was presented to contradict respondent's assertion that he withdrew the fees after they were earned.

24. Issue Six (failed to perform a monthly reconciliation) – paragraph 10(f) of the First Amended Accusation: Clear and convincing evidence established a violation of Business and Professions Code section 10145 and California Code of Regulations, title 10, section 2831.2. Respondent failed to maintain an accurate monthly reconciliation of TA1 and TA2, as well as the separate records for each client that had funds in the accounts, as evidenced by the shortages uncovered in each account.

25. Issue Seven (use of unlicensed/false fictitious business name) – paragraph 10(g) of the First Amended Accusation: Clear and convincing evidence established a violation of Business and Professions Code, section 10159.5, and California Code of Regulations, title 10, section 2731, subdivision (a). Respondent used the name and conducted property management transactions as All Gold Property Management from 2011 until February 6, 2017, when he finally registered the fictitious business name with the department.

26. Issue Eight (unlicensed branch offices) – paragraph 10(h) of the First Amended Accusation: Clear and convincing evidence established a violation of Business and Professions Code section 10163 and California Code of Regulations, title 10, section 2715. As of September 8, 2015, respondent's main office was located in Hesperia, he had no branch offices listed in his license history, yet he operated All Gold Property Management, out of a Victorville branch office. Respondent has corrected the violation and has his current main office and branch office properly on file with the department.

27. Issue Nine (failure to supervise activities of employees in relation to handling of client trust accounts) – paragraph 10(i) of the First Amended Accusation: Clear and convincing evidence did not establish that respondent failed to supervise employees at his offices, in violation of Business and Professions Code section 10177, subdivision (h), or California Code of Regulations, title 10, section 2725. The main problem with this allegation is that the Code section cited applies to the failure to exercise reasonable supervision over real estate salespersons, or if a broker, over the activities of the corporation for which a real estate license is required. No salespersons handled respondent's client trust account records and no evidence was produced that respondent's business entities are corporations. The same problem exists with the Regulation section, which applies only to broker activity over "salespersons."

Cause for Discipline

28. Cause exists to impose discipline pursuant to Business and Professions Code section 10165. Respondent was determined to have violated Business and Professions Code section 10163, by maintaining an office that was not registered with the department.

29. Cause does not exist to impose discipline pursuant to Business and Professions Code section 10177, subdivision (d). Although his actions may have been negligent or incompetent, insufficient evidence established that respondent willfully violated any provision of real estate law.

30. Cause exists to impose discipline pursuant to Business and Professions Code section 10177, subdivision (g). Respondent demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license, as evidenced by the sustained violations.

31. Cause does not exist to impose discipline pursuant to Business and Professions Code section 10177, subdivision (h), for the reasons discussed in Legal Conclusions paragraph 27.

32. Cause does not exist to impose discipline pursuant to Business and Professions Code section 10176, subdivision (i). Although respondent violated several provisions of law relating to client trust accounting, there was no evidence that any of his conduct constituted fraud or dishonest dealing. Negligence or incompetence in maintaining accurate bank records and in the handing of trust funds is not the same as fraud or dishonest dealing.

33. Cause exists to impose discipline pursuant to Business and Professions Code section 10177, subdivision (k). Respondent's restricted license requires him to obey all laws pertaining to real estate law. Based on the violations above; he did not.

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Appropriate Level of Discipline

34. Respondent's real estate license has been restricted since 1999 as a result of prior discipline. Respondent testified that he never applied for an unrestricted license because the department conducts audits and other oversight and it was not something he wanted to contend with. Complainant's counsel noted, correctly, that a restricted license does not provide complainant with the ability to monitor a respondent. Due to the fact that the violations sustained in this matter involved trust account and unlicensed branch office/advertising violations, it would be beneficial to the department, and in keeping with its mission to protect the public, to ensure after the one-year period that respondent is in compliance with all laws and able to obtain an unrestricted license. For that reason, respondent must undergo whatever process the department requires and apply for an unrestricted license following the expiration of the one-year restriction imposed in this matter.

Cost Recovery

35. The reasonable and allowable investigation, enforcement, and audit costs in this matter were determined to be \$14,183.70.

36. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth five factors to be considered in determining whether a particular licensee should be ordered to pay the reasonable costs of investigation and prosecution under statutes like Business and Professions Code section 10106 and 10148. Those factors are: whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Ibid.*)

37. Applying the *Zuckerman* factors to this case leads to the following conclusions: Respondent exhibited a good faith belief in the merits of his position and was successful in getting several of the bases for discipline dismissed; the scope of the investigation was appropriate in light of the alleged misconduct; and respondent appears to have the financial ability to pay the requested costs.

38. The reasonable costs of investigation and enforcement are therefore reduced by half, to \$7,437.85.

ORDER

All licenses and licensing rights of respondent Fred Eugene Dotterrer, real estate broker license number 0115261, are revoked; provided, however, that a restricted real estate broker license shall be issued to respondent under Business and Professions Code section

10156.5 if respondent makes application therefor and pays to the bureau the appropriate fee for the issuance of such a restricted license and pays \$7,437.85 in costs (investigation, audit, and enforcement) for this matter within 90 days from the effective date of this decision and order. The restricted license issued to respondent shall be subject to Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

1. The restricted license issued to respondent may be suspended prior to hearing by order of the commissioner in the event of respondent's conviction or plea of nolo contendere to a crime that is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by order of the commissioner on evidence satisfactory to the commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until **one year** has elapsed from the effective date of this decision and order. After one year has elapsed from the effective date of this decision and order, and within 60 days of that elapsed date, respondent **shall** apply for the issuance of an unrestricted real estate license. Failure to apply for the issuance of an unrestricted real estate license shall constitute a basis by order of the commissioner to suspend the restricted license prior to hearing.
4. Respondent shall, within nine 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 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 the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
5. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department 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.
6. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for

which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which the respondent engaged during the period covered by the report.

DATED: August 6, 2018

DocuSigned by:
Kimberly Belvedere
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KIMBERLY J. BELVEDERE
Administrative Law Judge
Office of Administrative Hearings