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DEPARTMENT OF REAL ESTATE
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105
Telephone: (213) 620-2072

FILED

MAR 20 2019

DEPT. OF REAL ESTATE
By Ingrid Manna

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation against	)	DRE No. H-41163 LA
	)	OAH No. 2018110691
VACATION PALM SPRINGS REAL ESTATE,	)	
INC. and BRENDAN PATRICK LENIHAN,	)	
individually and as designated officer for	)	<u>STIPULATION AND</u>
Vacation Palm Springs Real Estate, Inc.,	)	<u>AGREEMENT IN SETTLEMENT</u>
	)	<u>AND ORDER</u>
Respondents.	)	

It is hereby stipulated by and between Respondents VACATION PALM SPRINGS REAL ESTATE, INC. and BRENDAN PATRICK LENIHAN, individually, and as designated officer of Vacation Palm Springs Real Estate, Inc. (collectively "Respondents"), represented by Paul N. Dubrasich, Esq., and Complainant, acting by and through Lissete Garcia, Counsel for the Department of Real Estate ("Department"), as follows for the purpose of settling and disposing the Accusation filed on September 18, 2018, with Department Case No. H-41163 LA ("Accusation") in this matter:

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

Stipulation and Agreement
H-41163 LA

1 instead and in place thereof be submitted on the basis of the provisions of this Stipulation and
2 Agreement in Settlement and Order ("Stipulation").

3 2. Respondents have received, read, and understand the Statement to Respondent, the
4 Discovery Provisions of the APA, and Accusation filed by the Department in this proceeding.

5 3. Respondents filed a Notice of Defense pursuant to section 11506 of the Government
6 Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondents
7 hereby freely and voluntarily withdraw said Notice of Defense. Respondents acknowledge and
8 understand that by withdrawing said Notice of Defense, Respondents will thereby waive
9 Respondents' rights to require the Real Estate Commissioner ("Commissioner") to prove the
10 allegations in the Accusation at a contested hearing held in accordance with the provisions of the
11 APA and that Respondents will waive other rights afforded to Respondents in connection with
12 the hearing such as the right to present evidence in defense of the allegations in the Accusation
13 and the right to cross-examine witnesses.

14 4. This Stipulation is based on the factual allegations contained in the Accusation filed in
15 this proceeding. In the interest of expedience and economy, Respondents choose not to contest
16 these factual allegations, but to remain silent and understand that, as a result thereof, these
17 factual statements, will serve as a prima facie basis for the disciplinary action stipulated to
18 herein. The Real Estate Commissioner shall not be required to provide further evidence to prove
19 such allegations.

20 5. This Stipulation and Respondents' decision not to contest the Accusation are made for
21 the purpose of reaching an agreed disposition of this proceeding and are expressly limited to this
22 proceeding and any other proceeding or case in which the Department, or another licensing
23 agency of this state, another state or if the federal government is involved and otherwise shall not
24 be admissible in any other criminal or civil proceedings.

1 6. It is understood by the parties that the Real Estate Commissioner may adopt the
2 Stipulation and Agreement as his Decision in this matter, thereby imposing the penalty and
3 sanctions on Respondents' real estate licenses and license rights as set forth in the below
4 "Order." In the event that the Commissioner in his discretion does not adopt the Stipulation and
5 Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing
6 and proceeding on the Accusation under all the provisions of the APA and shall not be bound by
7 any admission or waiver made herein.

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

12 8. Respondents further understand that by agreeing to this Stipulation, Respondents
13 agree to pay, pursuant to California Business and Professions Code ("Code"), section 10106(a),
14 the investigative and enforcement costs of \$3,779.95 which led to this disciplinary action.

15 9. Respondents understand that by agreeing to this Stipulation, Respondents agree to
16 pay, pursuant to section 10148 of the Code, the cost of the audit which resulted in the
17 determination that Respondent committed the violations found in the "Determination of Issues"
18 below. The amount of said cost is \$11,469.98.

19 10. Respondents understand that by agreeing to this Stipulation, the findings set forth
20 below in the Determination of Issues become final, and the Commissioner may charge
21 Respondents for the cost of any subsequent audit conducted pursuant to Code section 10148 to
22 determine if the violations have been corrected. The maximum cost of the follow-up audit will
23 not exceed one-hundred twenty-five percent (125%) of the cost of the original audit; in the
24 instant case, the cost of the original audit is \$11,469.98, and the maximum cost of the follow-up

1 audit will not exceed \$14,337.47. Therefore, Respondents may be charged a maximum of
2 \$14,337.47 in the event of a subsequent audit.

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulation and agreement and solely for the purpose of
5 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the
6 following determination of issues shall be made:

7 I.

8 The conduct, acts and/or omissions of Respondent VACATION PALM SPRINGS REAL
9 ESTATE, INC., as set forth in Paragraphs 11(A) through 11(K) of the Accusation, constitutes
10 cause for the suspension or revocation of all real estate licenses and license rights of Respondent
11 VACATION PALM SPRINGS REAL ESTATE, INC. under the provisions of Code section
12 10177, subdivisions (d) and (g) for violation of Code section 10145 and Title 10, Chapter 6,
13 California Code of Regulations ("Regulation") 2832.1, 2831, 2831.1, 2831.2, 2832, 2834,
14 2835(b), and 2830.

15 II.

16 The conduct, acts and/or omissions of Respondent BRENDAN PATRICK LENIHAN as
17 set forth in Paragraph 11(L) of the Accusation, constitutes cause for the suspension or revocation
18 of all real estate licenses and license rights of Respondent BRENDAN PATRICK LENIHAN
19 under the provisions of Code section 10177(h) for violation of Code section 10159.2 and
20 Regulation 2725.

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All licenses and license rights of Respondent VACATION PALM SPRINGS REAL ESTATE, INC., are suspended for a period of thirty (30) days from the effective date of this Decision and Order; provided, however, said thirty (30) day suspension shall be stayed for two (2) years upon the following terms and conditions:

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 and Order. 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.

3. All licenses and licensing rights of Respondent VACATION PALM SPRINGS REAL ESTATE, INC. are indefinitely suspended unless or until Respondent VACATION PALM SPRINGS REAL ESTATE, INC. pays, severally or jointly with Respondent BRENDAN PATRICK LENIHAN, the sum of \$3,779.95 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 Department of Real Estate. **The investigative and enforcement costs must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Decision and Order. Payment of investigation and enforcement costs should not be made until the Stipulation has been approved by the Commissioner.**

1 4. Pursuant to section 10148 of the Code, Respondent VACATION PALM SPRINGS
2 REAL ESTATE, INC. shall pay, severally or jointly with Respondent BRENDAN PATRICK
3 LENIHAN, the sum of \$11,469.98 for the Commissioner's cost of the audit which led to this
4 disciplinary action. **Respondents shall pay such cost within sixty (60) days of receiving an**
5 **invoice therefore from the Commissioner. Payment of audit costs should not be made until**
6 **Respondents receive the invoice.** If Respondents fail to satisfy this condition in a timely
7 manner as provided for herein, Respondent VACATION PALM SPRINGS REAL ESTATE,
8 INC.'s real estate licenses shall automatically be suspended until payment is made in full, or
9 until a decision providing otherwise is adopted following a hearing held pursuant to this
10 condition.

11 5. Pursuant to section 10148 of the Code, Respondent VACATION PALM SPRINGS
12 REAL ESTATE, INC. shall pay the Commissioner's reasonable cost, not to exceed \$14,337.47,
13 for any subsequent audit to determine if Respondent VACATION PALM SPRINGS REAL
14 ESTATE, INC. has corrected the violations found in the Determination of Issues. In calculating
15 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
16 average hourly salary for all persons performing audits of real estate brokers, and shall include
17 an allocation for travel time to and from the auditor's place of work. **Respondent VACATION**
18 **PALM SPRINGS REAL ESTATE, INC. shall pay such cost within sixty (60) days of**
19 **receiving an invoice therefore from the Commissioner. Payment of the audit costs should**
20 **not be made until Respondent receives the invoice.** If Respondent VACATION PALM
21 SPRINGS REAL ESTATE, INC. fails to satisfy this condition in a timely manner as provided
22 for herein, Respondent VACATION PALM SPRINGS REAL ESTATE, INC.'s real estate
23 licenses shall automatically be suspended until payment is made in full, or until a decision
24 providing otherwise is adopted following a hearing held pursuant to this condition.

II.

All licenses and license rights of Respondent BRENDAN PATRICK LENIHAN are suspended for a period of thirty (30) days from the effective date of this Decision and Order; provided, however, said thirty (30) day suspension shall be stayed for two (2) years upon the following terms and conditions:

1. Respondent 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 and Order. 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.

3. All licenses and licensing rights of Respondent BRENDAN PATRICK LENIHAN 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 Code. Proof of satisfaction of this requirement includes evidence that Respondent has successfully completed the trust fund account and handling continuing education course, no earlier than 120 days prior to the effective date of the Decision and Order in this matter. **Proof of completion of the trust fund accounting and handling course must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the effective date of this Decision and Order.**

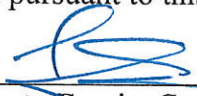
1 4. Respondent BRENDAN PATRICK LENIHAN shall, within nine (9) months from
2 **the effective date of this Decision and Order**, present evidence satisfactory to the
3 Commissioner that Respondent has, since the most recent issuance of an original or renewal real
4 estate license, taken and successfully completed the continuing education requirements of Article
5 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails
6 to satisfy this condition, Respondent's real estate license shall automatically be suspended until
7 Respondent presents evidence satisfactory to the Commissioner of having taken and successfully
8 completed the continuing education requirements. **Proof of completion of the continuing**
9 **education courses must be delivered to the Department of Real Estate, Flag Section at P.O.**
10 **Box 137013, Sacramento, CA 95813-7013.**

11 5. All licenses and licensing rights of Respondent BRENDAN PATRICK
12 LENIHAN, are indefinitely suspended unless or until Respondent BRENDAN PATRICK
13 LENIHAN, pays, severally or jointly with Respondent VACATION PALM SPRINGS REAL
14 ESTATE, INC., the sum of \$3,779.95 for the Commissioner's reasonable cost of the
15 investigation and enforcement which led to this disciplinary action. Said payment shall be in the
16 form of a cashier's check made payable to the Department of Real Estate. **The investigative**
17 **and enforcement costs must be delivered to the Department of Real Estate, Flag Section at**
18 **P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this Decision**
19 **and Order. Payment of investigation and enforcement costs should not be made until the**
20 **Stipulation has been approved by the Commissioner.**

21 6. Pursuant to section 10148 of the Code, Respondent BRENDAN PATRICK
22 LENIHAN shall pay, severally or jointly with Respondent VACATION PALM SPRINGS
23 REAL ESTATE, INC., the sum of \$11,469.98 for the Commissioner's cost of the audit which led
24 to this disciplinary action. **Respondents shall pay such cost within sixty (60) days of**

1 receiving an invoice therefore from the Commissioner. Payment of audit costs should not
2 be made until Respondents receive the invoice. If Respondents fail to satisfy this condition in
3 a timely manner as provided for herein, Respondent BRENDAN PATRICK LENIHAN's real
4 estate licenses shall automatically be suspended until payment is made in full, or until a decision
5 providing otherwise is adopted following a hearing held pursuant to this condition.

6 DATED: 1/29/2019


Lissete Garcia, Counsel
Department of Real Estate

8 * * *

9 EXECUTION OF THE STIPULATION

10 We have read this Stipulation and its terms are understood by us and are agreeable and
11 acceptable to us. We understand that we are waiving rights given to us by the California APA
12 (including, but not limited to, sections 11506, 11508, 11509, and 11513 of the Government
13 Code), and we willingly, intelligently, and voluntarily waive those rights, including the right of
14 requiring the Commissioner to prove the allegations in the Accusation at a hearing at which we
15 would have the right to cross-examine witnesses against us and to present evidence in defense
16 and mitigation of the charges.

17 Respondents can signify acceptance and approval of the terms and conditions of this
18 Stipulation and Agreement by electronically e-mailing a copy of the signature pages, as actually
19 signed by Respondents, to the Department. Respondents agree, acknowledge, and understand
20 that by electronically sending to the Department an electronic copy of Respondents' actual
21 signatures, as they appear on the Stipulation, that receipt of the emailed copy by the Department
22 shall be as binding on Respondents as if the Department had received the original signed
23 Stipulation. By signing this Stipulation, Respondents understand and agree that Respondents
24 may not withdraw their agreement or seek to rescind the Stipulation prior to the time the

1 Commissioner considers and acts upon it or prior to the effective date of the Stipulation and
2 Order.

3 MAILING

4 Respondents and their counsel shall, within five (5) business days from signing the
5 Stipulation, mail the original signed signature page(s) of the Stipulation herein to Lissete Garcia,
6 Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Room 350, Los
7 Angeles, California 90013-1105.

8 Respondents' signatures below constitute acceptance and approval of the terms and
9 conditions of this Stipulation. Respondents agree, acknowledge, and understand that by signing
10 this Stipulation Respondents are bound by its terms as of the date of such signature and that this
11 agreement is not subject to rescission or amendment at a later date except by a separate Decision
12 and Order of the Real Estate Commissioner.

13 DATED: 1-28-19

Mary Lynn Clark
Respondent VACATION PALM SPRINGS REAL
ESTATE, INC.
By (Printed Name): Mary Lynn Clark
Title: President

17 DATED: 1/28/2019

Brendan Patrick Lenihan
Respondent BRENDAN PATRICK LENIHAN

19 DATED: _____

Paul N. Dubrasich, Esq., Attorney for Respondents
Approved as to Form

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1 Commissioner considers and acts upon it or prior to the effective date of the Stipulation and
2 Order.

3 MAILING

4 Respondents and their counsel shall, within five (5) business days from signing the
5 Stipulation, mail the original signed signature page(s) of the Stipulation herein to Lisette Garcia,
6 Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Room 350, Los
7 Angeles, California 90013-1105.

8 Respondents' signatures below constitute acceptance and approval of the terms and
9 conditions of this Stipulation. Respondents agree, acknowledge, and understand that by signing
10 this Stipulation Respondents are bound by its terms as of the date of such signature and that this
11 agreement is not subject to rescission or amendment at a later date except by a separate Decision
12 and Order of the Real Estate Commissioner.

13 DATED: _____

Respondent VACATION PALM SPRINGS REAL
ESTATE, INC.

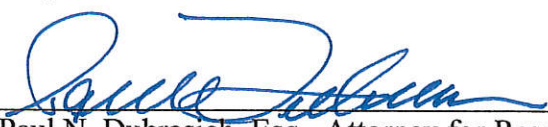
By (Printed Name): _____

Title: _____

17 DATED: _____

Respondent BRENDAN PATRICK LENIHAN

19 DATED: 1-28-2019


Paul N. Dubrasich, Esq., Attorney for Respondents

Approved as to Form

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The foregoing Stipulation and Agreement in Settlement and Order is hereby
adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on

APR 08 2019

, 2019.

IT IS SO ORDERED March 14, 2019.

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri