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MAY 18 2020

DEPARTMENT OF REAL ESTATE

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation against

MERRILL & ASSOCIATES REAL ESTATE,  
CASSANDRA ANNE MERRILL,  
ANDREW BERRY, and SCOTT ANTHONY  
BERRY,

Respondents.

DRE No. H-41222 LA

OAH No. 2019010258

STIPULATION AND AGREEMENT IN  
SETTLEMENT AND ORDER

(AS TO SCOTT ANTHONY BERRY  
ONLY)

It is hereby stipulated by and between SCOTT ANTHONY BERRY ("Respondent"), acting by and through his attorney, John Belsher, and the Complainant, acting by and through David Bruce, Counsel for the Department of Real Estate ("Department"), as follows for the purpose of settling and disposing of the First Amended Accusation filed by the Department on June 12, 2019, in this matter ("Accusation"):

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (Government Code sections 11400 *et seq.* ["APA"]), shall instead and in place thereof be submitted solely on the

1 basis of the provisions of this Stipulation and Agreement in Settlement and Order ("Stipulation  
2 and Agreement").

3 2. Respondent has received, read and understands the Statement to Respondent, the  
4 Discovery Provisions of the APA and the Accusation filed by the Department in this matter.

5 3. Respondent filed a Notice of Defense pursuant to Section 11506 of the  
6 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.  
7 Respondent hereby freely and voluntarily withdraws such Notice of Defense. Respondent  
8 acknowledges he understands that by withdrawing such Notice of Defense that Respondent  
9 thereby waives his right 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 Respondent will waive other rights afforded to him in connection with the hearing  
12 such as the right to present evidence in his defense, and the right to cross-examine witnesses.  
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14 4. This Stipulation and Agreement is based on the allegations in the Accusation  
15 against Respondent. In the interest of expediency and economy, Respondent chose not to contest  
16 such allegations but to remain silent and understands that, as a result thereof, such allegations,  
17 without being admitted, will serve as a prima facie basis for the disciplinary action stipulated to  
18 herein. The Commissioner shall not be required to provide evidence to prove such allegations.  
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20 5. This Stipulation and Agreement and Respondent's decision not to contest the  
21 allegations in the Accusation are made for the purpose of reaching an agreed settlement of this  
22 matter and are expressly limited to this matter and any other matter or case in which the  
23 Department, the state or federal government, an agency of this state, or an agency of another  
24 state is involved and do not constitute admissions by Respondent to any other person or entity.  
25 This Stipulation and Agreement shall have no force or effect on Respondent except as stated  
26 herein.  
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1           6.     It is understood by the parties hereto that the Commissioner may adopt this  
2 Stipulation and Agreement as her Decision and Order in this matter thereby imposing the penalty  
3 and sanctions on Respondent's real estate license and license rights as set forth in the below  
4 "Order." In the event that the Commissioner in her discretion does not adopt this Stipulation and  
5 Agreement, this Stipulation and Agreement shall be void and of no effect, and Respondent shall  
6 retain the right to a hearing and proceed on the Accusation under the provisions of the APA and  
7 shall not be bound by any stipulation, admission or waiver made herein.  
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9           7.     This Decision and Order or any subsequent Decision and Order of the  
10 Commissioner made pursuant to this Stipulation and Agreement shall not constitute an estoppel,  
11 merger or bar to any further administrative or civil proceedings by the Department with respect  
12 to any matters that were not specifically alleged in the Accusation.  
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#### 14                               DETERMINATION OF ISSUES

15           By reason of the foregoing stipulations, admissions and waivers, and solely for the  
16 purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed  
17 that the following determination of issues shall be made:

18           1.     The acts and/or omissions of Respondent, as described in the Accusation, are in  
19 violation of Business and Professions Code ("Code") sections 10177(g) (Negligence), 11010  
20 (Application for Public Report) and 11018.2 (Public Report Required Prior to Sale or Offer for  
21 Sale), and in conjunction with the California Code of Regulations, Title 10, Sections 2791  
22 (Purchase Money Disbursements), 2791.1 (Purchase Money Impounds) and 2791.2 (Bond  
23 Alternative to Purchase Money Impound), and are a basis for disciplinary action against  
24 Respondent.

#### 25                               ORDER

26           WHEREFORE, THE FOLLOWING ORDER is hereby made:  
27

1       The real estate broker license, and its accompanying licensing rights, of Respondent  
2 SCOTT ANTHONY BERRY are revoked; provided, however, that a restricted real estate broker  
3 license shall be issued to Respondent pursuant to Section 10156.5 of the Code if Respondent  
4 makes application for the restricted real estate broker license within ninety (90) days of the  
5 effective date of this Decision and Order. The restricted real estate broker license issued to  
6 Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and to the  
7 following conditions, limitations and restrictions imposed under the authority of Section 10156.6  
8 of the Code:

9       1.       The restricted real estate broker license issued to Respondent may be suspended  
10 prior to hearing by Order of the Commissioner in the event of Respondent's conviction or plea of  
11 nolo contendere to a crime that is substantially related to Respondent's fitness or capacity as a  
12 real estate licensee.

13       2.       The restricted real estate broker license issued to Respondent may be suspended  
14 prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that  
15 Respondent has violated provisions of the Real Estate Law, the Subdivided Lands Law, the  
16 Regulations of the Real Estate Commissioner or any other conditions, limitations or restrictions  
17 attaching to the restricted real estate broker license.

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

24       4.       Respondent shall, within one (1) year from the effective date of this Decision and  
25 Order, take and pass the Professional Responsibility Examination administered by the  
26 Department, including the payment of the appropriate examination fee. If Respondent fails to  
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1 satisfy this condition, then the Commissioner may order the suspension of Respondent's real  
2 estate broker license until Respondent passes the examination.

3         5.       Respondent shall, prior to and as a condition of the issuance of the restricted real  
4 estate broker license, submit proof satisfactory to the Commissioner of having taken and  
5 successfully completed the continuing education course on trust fund accounting and handling  
6 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. The proof of  
7 Respondent's satisfaction of this requirement must include evidence that Respondent has  
8 successfully completed the trust fund accounting and handling continuing education course  
9 within 120 days of the effective date of this Decision and Order. The proof of Respondent's  
10 completion of the trust fund accounting and handling course, including date of completion, must  
11 be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento,  
12 California, 95813-7013, or by fax at 916-576-8652. If Respondent fails to satisfy this condition,  
13 then the Commissioner may order the suspension of Respondent's real estate broker license until  
14 Respondent provides the proof as required herein.

15         6.       Respondent shall notify the Commissioner in writing within 72 hours of any arrest  
16 by sending a certified letter to the Commissioner at the Department of Real Estate, P.O. Box  
17 137000, Sacramento, California, 95813-7000. The letter shall set forth the date of Respondent's  
18 arrest, the alleged crime for which Respondent was arrested and the name and address of the  
19 arresting law enforcement agency. Respondent's failure to timely notify the Commissioner with  
20 such a letter shall constitute an independent violation of the terms and conditions of this  
21 Stipulation and Agreement and shall be grounds for the suspension or revocation of the restricted  
22 real estate broker license.

23         7.       The real estate broker license, and its accompanying licensing rights, of  
24 Respondent SCOTT ANTHONY BERRY are indefinitely suspended unless or until Respondent  
25 pays his 1/3 pro rata share of \$14,570 (FOURTEEN THOUSAND FIVE HUNDRED  
26 SEVENTY DOLLARS) for the Commissioner's reasonable costs of the investigation and  
27 enforcement that led to this disciplinary action; such payment shall be in the form of a cashier's

1 check or certified check made payable to the Department. The investigative and enforcement  
2 costs must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013,  
3 Sacramento, California, 95813-7013, prior to the effective date of this Decision and Order.

4  
5 DATED

  
DAVID EDWARD BRUCE, Counsel  
Department of Real Estate

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9 I have read this Stipulation and Agreement, have discussed it with my counsel, and its  
10 terms and conditions are understood by me and are agreeable and acceptable to me. I understand  
11 that I am waiving rights given to me by the APA (including, but not limited to, Sections 11506,  
12 11508, 11509 and 11513 of the Government Code), and I willingly, intelligently and voluntarily  
13 waive those rights, including the right of requiring the Commissioner to prove the allegations in  
14 the Accusation at a hearing at which I would have the right to cross-examine witnesses against  
15 me and to present evidence in defense and mitigation of the charges contained therein.

16 Respondent can signify acceptance and approval of the terms and conditions of this  
17 Stipulation and Agreement by faxing a copy of the signature page, as actually signed by  
18 Respondent, to the Department at fax number (916) 263-3767 or by e-mail to  
19 [david.bruce@dre.ca.gov](mailto:david.bruce@dre.ca.gov). Respondent agrees, acknowledges and understands that by  
20 electronically sending to the Department a faxed copy of Respondent's actual signature as it  
21 appears on this Stipulation and Agreement, that receipt of the faxed copy by the Department  
22 shall be as binding on Respondent as if the Department had received the originally-signed  
23 Stipulation and Agreement.

24  
25 DATED

  
SCOTT ANTHONY BERRY  
Respondent

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27 \* \* \* \*

1 I have reviewed this Stipulation and Agreement as to form and content and have advised  
2 my client accordingly.

3  
4 DATED

4/13/20

  
JOHN BELSHER  
Attorney for Respondent

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8 The foregoing Stipulation and Agreement in Settlement and Order is hereby adopted by  
9 the Real Estate Commissioner as her Decision and Order, and shall become effective at 12  
10 o'clock noon on JUN 08 2020.

11 IT IS SO ORDERED MAY 8, 2020.

12 DOUGLAS R. MCCAULEY  
13 REAL ESTATE COMMISSIONER

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