

1 2. Respondent has received, read and understands the Statement to Respondent,
2 the Discovery Provisions of the APA, and the Accusation filed by the Department of Real Estate
3 ("Department") in this proceeding.

4 3. Respondent filed a Notice of Defense pursuant to Section 11506 of the
5 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
6 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent
7 acknowledges that Respondent understands that by withdrawing said Notice of Defense
8 Respondent thereby waives his right to require the Commissioner to prove the allegations in the
9 Accusation at a contested hearing held in accordance with the provisions of the APA and that
10 Respondent will waive other rights afforded to him in connection with the hearing such as the
11 right to present evidence in their defense, and the right to cross-examine witnesses.

12 4. This Stipulation is based on the factual allegations contained in the
13 Accusation. In the interest of expedience and economy, Respondent chooses not to contest these
14 allegations but to remain silent and understands that, as a result thereof, these factual allegations,
15 without being admitted or denied, will serve as a prima facie basis for the disciplinary action
16 stipulated to herein. The Real Estate Commissioner shall not be required to provide evidence to
17 prove said factual allegations.

18 5. It is understood by the parties that the Real Estate Commissioner may adopt
19 this Stipulation as his Decision in this matter thereby imposing the penalty and sanctions on
20 Respondent's real estate licenses and license rights as set forth in the below "Order." In the event
21 that the Commissioner in his discretion does not adopt the Stipulation, the Stipulation shall be
22 void and of no effect and Respondent shall retain the right to a hearing and proceed on the
23 Accusation under the provisions of the APA and shall not be bound by any stipulation or waiver
24 made herein.

25 6. The Order or any subsequent Order of the Real Estate Commissioner made
26 pursuant to this Stipulation shall not constitute an estoppel, merger or bar to any further
27 administrative or civil proceedings by the Department with respect to any matters which were

1 not specifically alleged to be causes for accusation in this proceeding.

2 DETERMINATION OF ISSUES

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

5 The conduct, acts or omissions of Respondent JOHN FREDERICK BRISCOE,
6 JR, as set forth in the Accusation, are in violation of Business and Professions Code ("Code")
7 sections 10140.6 and 10145 and Sections 2773, 2831, 2831.1, 2831.2, 2832, 2832.1, and 2834 of
8 Title 10, Chapter 6, of the California Code of Regulations ("Regulations") and are a basis for
9 discipline of Respondent's license(s) and license rights pursuant to Code sections 10176(e),
10 10177(d) and/or 10177(g).

11 ORDER

12 WHEREFORE, THE FOLLOWING ORDER is hereby made:

13 I.

14 All licenses and license rights of Respondent JOHN FREDERICK BRISCOE, JR
15 under the Real Estate Law are suspended for a period of ninety (90) days from the effective date
16 of this Decision; provided, however, that:

17 A. The initial sixty (60) days of said suspension shall be stayed for two (2) years
18 upon the following terms and conditions:

19 1. Respondent shall pay a monetary penalty pursuant to Code section
20 10175.2 at the rate of \$75.00 per day for each of the sixty (60) days of suspension for a total
21 monetary penalty of \$4,500.00.

22 2. Said payment shall be in the form of a cashier's check made payable to
23 the Department of Real Estate. Said check must be delivered to the Department of Real Estate,
24 Flag Section, P.O. Box 137013, Sacramento, CA 95813-7013, within ninety (90) days from
25 effective date of this Decision and Order.

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STIPULATION AND AGREEMENT IN SETTLEMENT AND ORDER

3. No further cause for disciplinary action against the real estate licenses of Respondent occurs within two (2) years from the effective date of the Decision in this matter.

4. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the suspension shall go into effect automatically with regard to said Respondent. Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision and Order.

5. If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate licenses of Respondent occurs within two (2) years from the effective date of the Decision, the stay hereby granted shall become permanent.

B. The remaining thirty (30) days of the ninety (90) day suspension shall be stayed for two (2) years upon the following terms and conditions:

1. That 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. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed suspension. Should no such determination be made under this section, the stay imposed herein shall become permanent.

II.

Pursuant to Code section 10148, Respondent shall pay the Commissioner's reasonable costs for the audit which led to this disciplinary action in the amount of \$11,023.27. Respondent shall pay such costs within ninety (90) days of receiving an invoice therefore from the Commissioner. Payment of the audit costs should not be made until Respondent receives the invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein, Respondent's real estate licenses shall automatically be suspended until payment is made in full.

1 or until a decision providing otherwise is adopted following a hearing held pursuant to this
2 condition.

3 III.

4 Pursuant to Code section 10148 of the Code, Respondent shall pay the
5 Commissioner's reasonable costs, not to exceed \$13,779.09, for a subsequent audit to determine
6 if Respondent has corrected the violations found in the Determination of Issues. In calculating
7 the amount of the Commissioner's reasonable costs, the Commissioner may use the estimated
8 average hourly salary for all persons performing audits of real estate brokers, and shall include
9 an allocation for travel time to and from the auditor's place of work. Respondent shall pay such
10 costs within sixty (60) days of receiving an invoice therefor from the Commissioner. Payment of
11 the audit costs should not be made until Respondent receives the invoice. If Respondent fails to
12 satisfy this condition in a timely manner as provided for herein, Respondent's real estate licenses
13 shall automatically be suspended until payment is made in full, or until a decision providing
14 otherwise is adopted following a hearing held pursuant to this condition.

15 IV.

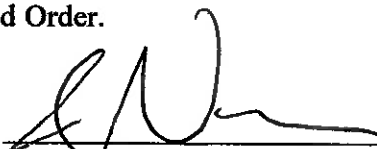
16 All licenses and license rights of Respondent are indefinitely suspended unless or
17 until Respondents pay the total amount of \$2,391.50 for the Commissioner's reasonable costs of
18 the investigation and enforcement, which led to this disciplinary action. Said payment shall be
19 in the form of a cashier's check made payable to the Department of Real Estate. The
20 investigation and enforcement costs must be delivered to the Department of Real Estate, Flag
21 Section, at P.O. Box 137013, Sacramento, CA 95813-7013, within six (6) months from the
22 effective date of this Decision and Order.

23 V.

24 All licenses and license rights of Respondent are indefinitely suspended unless or
25 until Respondent provides proof satisfactory to the Commissioner, of having taken and
26 successfully completed the continuing education course on trust fund accounting and handling
27 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions

1 Code. Proof of satisfaction of these requirements includes evidence that Respondent has
2 successfully completed the trust fund account and handling continuing education course, no
3 earlier than 120 days prior to the effective date of the Decision and Order in this matter. Proof
4 of completion of the trust fund accounting and handling course must be delivered to the
5 Department of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013
6 prior to the effective date of this Decision and Order.

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8 DATED: 6-8-2020


Judith B. Vasan, Counsel for
Department of Real Estate

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11 EXECUTION OF THE STIPULATION

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

19 Respondent shall mail the original signed signature page of the stipulation herein
20 to Judith B. Vasan, Attention: Legal Section, Department of Real Estate, 320 W. Fourth St.,
21 Suite 350, Los Angeles, California 90013-1105.

22 In the event of time constraints before an administrative hearing, Respondent can
23 signify acceptance and approval of the terms and conditions of this Stipulation and Agreement
24 by emailing a scanned copy of the signature page, as actually signed by Respondent, to the
25 Department counsel assigned to this case. Respondent agrees, acknowledges and understands
26 that by electronically sending the Department a scan of Respondent's actual signature as it
27 appears on the Stipulation and Agreement that receipt of the scan by the Department shall be

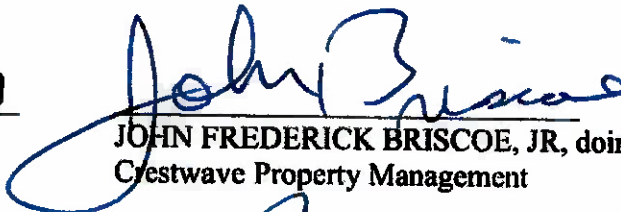
STIPULATION AND AGREEMENT IN SETTLEMENT AND ORDER

1 binding on Respondent as if the Department had received the original signed Stipulation.

2 Respondent shall also mail the original signed signature page of this Stipulation to the
3 Department counsel.

4 Respondent's signature below constitutes acceptance and approval of the terms
5 and conditions of this Stipulation. Respondent agrees, acknowledges and understands that by
6 signing this Stipulation, Respondent is bound by its terms as of the date of such signatures and
7 that this agreement is not subject to rescission or amendment at a later date except by a separate
8 Decision and Order of the Real Estate Commissioner.

9
10 DATED: MAY 12 2020


JOHN FREDERICK BRISCOE, JR, doing business as
Crestwave Property Management

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12
13 DATED: May 20, 2020


Paul J. Carter, Esq.
Bergkvist, Bergkvist & Carter, LLP
Counsel for Respondent
Approved as to Form

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16 * * *

17 The foregoing Stipulation and Agreement is hereby adopted as my Decision as to
18 Respondent JOHN FREDERICK BRISCOE, JR and shall become effective at 12 o'clock noon
19 on AUG 31 2020.

20 IT IS SO ORDERED 7.30.20

21
22 DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

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