

**State Bar Court of California
Hearing Department
San Francisco
REPROVAL**

Counsel For The State Bar Robin Brune Deputy Trial Counsel 180 Howard Street San Francisco, California 94105 Bar # 149481	Case Number(s): 11-O-14288-PEM	For Court use only NOT FOR PUBLICATION FILED DEC 29 2011 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PRIVATE REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED
Counsel For Respondent Ed Lear, Esq. Century Law Group 5200 West Century Blvd. Suite 345 Los Angeles, California 90045 Bar # 132699		
In the Matter of: R. Steven Pierce Bar # 105255 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 3, 1982.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 12 pages, not including the order.



- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☐ Costs are added to membership fee for calendar year following effective date of discipline (public reproof).
 - ☒ Case ineligible for costs (private reproof).
 - ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.
- (9) The parties understand that:
- (a) ☐ A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) ☒ A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) ☐ A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline

- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☒ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. Respondent has been cooperative throughout these proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.

- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline:

- (1) ☒ **Private reproof (check applicable conditions, if any, below)**
- (a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) ☒ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) ☐ **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) ☒ Respondent must comply with the conditions attached to the reproof for a period of one year.
- (2) ☒ During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reprobation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reprobation during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (7) ☐ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reprobation.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reprobation.
- ☐ No MPRE recommended. Reason: .
- (11) ☒ The following conditions are attached hereto and incorporated:

- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

(Do not write above this line.)

Attachment language (if any):

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Steven Pierce

CASE NUMBER(S): 11-O-14288

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 11-O-14288 (Complainant: self-reported)

FACTS:

At all relevant times, respondent was licensed as a real estate broker and as the designated officer-broker of Pacific Capital Holdings, Inc. ("PCHI.") As the designated officer-broker, respondent was responsible under Business and Profession Code section 10159.2 ("the Code") for the supervision of the activities of the officers, real estate licensees and employees of PCHI.

On or about May 5, 2009, the Department of Real Estate filed an Accusation in case number H-10668 SF against respondent and others. Attached as Exhibit 1 and incorporated by reference as if fully set forth herein is a true and correct copy of the Accusation.

The Accusation alleged in paragraph 10 that PCHI:

failed to place entrusted funds in a trust account as required by section 10145 of the Code and Section 2832 of Title 10, the California Code of Regulations ("Regulations");

failed to keep specific trust account records as required by Section 2831 of the Regulations;

failed to properly reconcile the trust account records as required by Section 2831.2 of the Regulations; and

permitted commingling of trust funds with non-trust funds in violation of Section 10176(e) of the Code and section 2835 of the Regulations.

The Accusation alleged in paragraph 12 that between December 12, 2006 and December 31, 2007, respondent failed to exercise reasonable supervision over the acts of PCHI and its agents and employees in such matter as to allow the acts and omissions on the part of PCHI to occur, as described in paragraph 10 of the Accusation, in violation of Sections 10159.2 and 10177(g) and (h) of the Code and Section 2725 of the Regulations.

The Accusation in paragraph 14 alleged that the facts set forth in the Accusation were grounds for suspension or revocation of respondent's license rights under Sections 10159.2, 10177(g) and (h) of the Code and Section 2725 of the Regulations.

On November 9, 2009, respondent executed a Stipulation and Agreement in Settlement and Order ("Stipulation") which was filed on December 16, 2009 and became effective on January 5, 2010. Attached as Exhibit 2 and incorporated by reference as if fully set forth herein is a true and correct copy of the Stipulation.

In the Stipulation at paragraph 4, respondent admitted the factual allegations set forth in paragraph 10 and paragraph 14 of the Accusation were true and correct.

Pursuant to the Stipulation's Determination of Issues, at subsection (g), the acts and omissions of respondent were grounds for the suspension or revocation of his license under Sections 10159.2, 10177(g) and (h) of the Code and Section 2725 of the Regulations.

By engaging in the conduct described in the Accusation, respondent violated Sections 10159.2, 10177(g) and (h) of the Code and Section 2725 of the Regulations.

CONCLUSIONS OF LAW:

By engaging in the violations set forth above, respondent failed to support the laws of this state of this state, and thereby respondent willfully violated Business and Professions Code, section 6068(a).

PENDING PROCEEDINGS:

The disclosure date referred to, on page 2, paragraph A(7), was December 12, 2011.

AUTHORITIES SUPPORTING DISCIPLINE:

The Standards for Attorney Sanctions for Professional Misconduct call for ninety days actual suspension for any violation of 4-100. (Standard 2.2(b)). Here, the State Bar did not charge 4-100 but a violation of Business and Professions Code, section 6068(a).

There are two private reproof cases on point. *In the Matter of Respondent C* (1991) 1 Cal. State Bar Ct. Rptr. 439; *In the Matter of Respondent E* (1991) 1 Cal. State Bar Ct. Rptr. 716.

In *Respondent C*, the Court imposed a private reproof for a violation of Business and Professions Code, section 6068(a). The underlying misconduct was a failure to communicate. Business and Professions Code, section 6068(m) had not yet been enacted, so the Court found a violation of 6068(a).

In *Respondent E*, the attorney, who was in practice for 40 years, mishandled one check for an expert witness, placing it in his general account instead of his trust account. It took him a year to correct the financial mismanagement. The Court was persuaded by his lack of discipline with many years of practice as well as the fact that the attorney had no personal knowledge of the problem but had failed to supervise staff. The Court found the respondent culpable of Business and Professions Code, 6106.

In this matter, the Dept. of Real Estate has confirmed respondent's account that the respondent had no personal knowledge and that he had failed to supervise staff. No client was harmed in that the funds were in the wrong account but they were not misappropriated. Respondent worked for a large brokerage firm as the broker-agent and periodically visited the branch offices. Staff under his supervision handled

rental property funds contrary to the law. Under these circumstances the State Bar sees this private reproof with public disclosure as appropriate public protection.

(Do not write above this line.)

In the Matter of:
R. Steven Pierce
No. 105255

Case Number(s):
11-O-14288-PEM

Financial Conditions

a. Restitution

- ☐ Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

- ☐ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- ☐ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reproval), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- ☐ If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

- ☐ 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

- b. Respondent has kept and maintained the following:
- i. A written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and,
 - 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

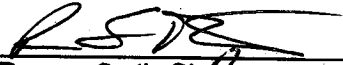
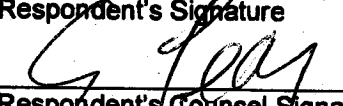
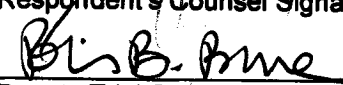
- ☒ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

(Do not write above this line.)

In the Matter of: R. STEVEN PIERCE No. 105255	Case number(s): 11-O-14288-PEM
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>12/14/11</u> Date	<u></u> Respondent's Signature	<u>R. STEVEN PIERCE</u> Print Name
<u>12/20/11</u> Date	<u></u> Respondent's Counsel Signature	<u>ED LEAR</u> Print Name
<u>12/22/2011</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>ROBIN BRUNE</u> Print Name

In the Matter of:
R. STEVEN PIERCE
No. 105255

Case Number(s):
11-O-14288-PEM

REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☒ All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date

Dec. 29, 2011

Judge of the State Bar Court

LUCY ARMENDARIZ

MARY F. CLARKE, Counsel (SBN 186744)
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

FILED

MAY - 5 2009

DEPARTMENT OF REAL ESTATE

H. Contreras

Telephone: (916) 227-0789
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
PACIFIC CAPITAL HOLDINGS, INC.,)
a Corporation,)
ROBERT STEVEN PIERCE, and)
MATTHEW PETER MURPHY,)
)
Respondents.)

NO. H-10668 SF

ACCUSATION

The Complainant, E. J. HABERER II, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against PACIFIC CAPITAL HOLDINGS, INC., a Corporation (herein "PCH"), ROBERT STEVEN PIERCE (herein "PIERCE"), and MATTHEW PETER MURPHY (herein "MURPHY") is informed and alleges as follows:

1

The Complainant makes this Accusation in his official capacity.

2

At all times herein mentioned, Respondents PCH, PIERCE, and MURPHY (herein "Respondents") were and now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

At all times herein mentioned PCHI was and now is licensed by the State of California Department of Real Estate (herein "the Department") as a corporate real estate broker by and through PIERCE as designated officer-broker of PCHI to qualify said corporation and to act for said corporation as a real estate broker.

At all times herein mentioned, PIERCE was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of PCHI as of December 12, 2006. As said designated officer-broker, PIERCE was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of PCHI for which a license is required.

At all times herein mentioned, MURPHY was and now is licensed by the Department as a real estate broker, individually and was designated officer-broker of PCHI from about December 2, 2002 to about December 11, 2006. As said designated officer-broker, MURPHY was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of PCHI for which a license is required.

Whenever reference is made in an allegation in this Accusation to an act or omission of PCHI, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with PCHI committed such act or omission while engaged in the furtherance of the business or operations of such corporate Respondent and while acting within the course and scope of their authority and employment.

///

At all times herein mentioned Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate brokers for compensation, or in expectation of compensation, within the State of California within the meaning of:

(a) Section 10131(a) of the Code, the operation of a real estate sales brokerage, wherein Respondents sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property for a business opportunity; and

(b) Section 10131 (b) of the Code, the operation of a property management business with the public wherein Respondents leased or rented and offered to lease or rent, and placed for rent, and/or solicited listings of places for rent, and/or solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

In so acting as a real estate broker, as described in Paragraph 7, above, PCHI accepted or received funds in trust (herein "trust funds") from or on behalf of buyers, owners, tenants, borrowers, lenders and others in connection with real estate sales, leasing, renting, and collection of rents on real property or improvements thereon, and thereafter from time to time made disbursements of said funds.

The aforesaid trust funds accepted or received by PCHI were deposited or caused to be deposited by PCHI into one or more bank accounts maintained by PCHI at the Oakland, California branch of the Wells Fargo Bank, including but not necessarily limited to "PCH, Inc dba Keller Williams Realty", account number 668-2025579 (herein "Bank #1").

Between about September 6, 2006 and about December 31, 2007, in connection with the collection and disbursement of said trust funds, PCHI:

1 (a) failed to place trust funds entrusted to PCHI into the hands of a principal on
2 whose behalf the funds were received, into a neutral escrow depository, or into a trust fund
3 account in the name of PCHI as trustee at a bank or other financial institution, in conformance
4 with the requirements of Section 10145 of the Code and Section 2832 of Title 10, the California
5 Code of Regulations (herein the "Regulations"), in that PCHI placed such funds into Bank #1, an
6 account that was not in the name of PCHI as trustee;

7 (b) failed to keep a columnar record in chronological sequence of all trust funds
8 received and disbursed from Bank #1 containing all the information required by Section 2831 of
9 the Regulations;

10 (c) failed to keep a separate record for each beneficiary or transaction,
11 accounting therein for all funds which have been deposited into Bank #1, containing all
12 information required by Section 2831.1 of the Regulations;

13 (d) failed to reconcile, at least once a month, the balance of all separate
14 beneficiary or transaction records with Bank #1, as required by Section 2831.2 of the
15 Regulations; and,

16 (e) caused, suffered, or permitted money of others which was received and held
17 by PCHI in Bank #1 to be commingled with PCHI's own money, in violation of Section
18 10176(e) of the Code and Section 2835 of the Regulations.

19 11

20 Between about January 1, 2007 and about December 31, 2007, in connection with
21 PCHI's real estate brokerage activities, PCHI:

22 (a) failed to retain in its possession and make available for inspection to the
23 Commissioner, real estate salesperson licenses for Pamela Flaggs (license #00584267), Leona
24 Greenlow (license # 1390252), and Sherry Long (license #1251637), in violation of Section
25 10160 of the Code and Section 2753 of the Regulations; and,

26 (b) failed to have a written agreement with real estate salesperson Teresita
27 Monroe (license #1220607), in violation of Section 2726 of the Regulations.

At all times mentioned herein, between about December 12, 2006 and December 31, 2007, PIERCE failed to exercise reasonable supervision over the acts of PCHI and its agents and employees in such a manner as to allow the acts and omissions on the part of PCHI, described above, to occur, in violation of Sections 10159.2 and 10177(g) and (h) of the Code and Section 2725 of the Regulations.

At all times mentioned herein, between about September 6, 2006 and December 11, 2006, MURPHY failed to exercise reasonable supervision over the acts of PCHI and its agents and employees in such a manner as to allow the acts and omissions on the part of PCHI, described above, to occur in violation of Sections 10159.2 and 10177(g) and (h) of the Code and Section 2725 of the Regulations.

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents under the following provisions of the Code and/or the Regulations:

- (a) as to Paragraph 10(a) and PCHI under Section 10145 of the Code and Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;
- (b) as to Paragraph 10(b) and PCHI under Section 10145 of the Code and Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;
- (c) as to Paragraph 10(c) and PCHI under Section 10145 of the Code and Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (d) as to Paragraph 10(d) and PCHI under Section 10145 of the Code and Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;

- 1 (e) as to Paragraph 10(e) and PCHI under Section 10176(e) of the Code and
2 2835 of the Regulations;
3 (f) as to Paragraph 11(a) and PCHI under Section 10160 of the Code and
4 Section 2753 of the Regulations in conjunction with Section 10177(d) of
5 the Code;
6 (g) as to Paragraph 11(b) and PCHI under Section 2726 of the Regulations in
7 conjunction with Section 10177(d) of the Code;
8 (h) as to Paragraph 12 and PIERCE under Sections 10159.2, 10177(g) and (h)
9 of the Code and Section 2725 of the Regulations; and,
10 (i) as to Paragraph 13 and MURPHY under Sections 10159.2, 10177(g) and (h)
11 of the Code and Section 2725 of the Regulations.

12 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
13 of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary
14 action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of
15 Division 4 of the Business and Professions Code) and for such other and further relief as may be
16 proper under other applicable provisions of law.

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19
20 
21 E. J. HABERER II
22 Deputy Real Estate Commissioner
23

24 Dated at Oakland, California

25 this 15th day of January, 2009.
26
27

MARY F. CLARKE, Counsel (SBN 186744)
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789
-or- (916) 227-0780 (Direct)

FILED

DEC 16 2009

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
PACIFIC CAPITAL HOLDINGS, INC.,)
a Corporation,)
ROBERT STEVEN PIERCE, and)
MATTHEW PETER MURPHY,)
)
Respondents.)
)

NO. H-10668 SF

STIPULATION AND AGREEMENT
IN SETTLEMENT
AND ORDER

It is hereby stipulated by and between Respondents PACIFIC CAPITAL HOLDINGS, INC. (herein "PCHI"), ROBERT STEVEN PIERCE (herein "PIERCE"), and MATTHEW PETER MURPHY (herein "MURPHY") (herein jointly "Respondents"), individually and jointly, by and through Mary E. Work, attorney of record herein for Respondents, and the Complainant, acting by and through Mary F. Clarke, Counsel for the Department of Real Estate (herein "the Department"), as follows for the purpose of settling and disposing of the Accusation filed on May 5, 2009, 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 (herein

1 APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this
2 Stipulation and Agreement in Settlement and Order.

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

6 3. A Notice of Defense was filed on May 13, 2009, by Respondents pursuant to
7 Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations
8 in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense.
9 Respondents acknowledge that they understand that by withdrawing said Notice of Defense they
10 will thereby waive their right to require the Real Estate Commissioner (herein "Commissioner")
11 to prove the allegations in the Accusation at a contested hearing held in accordance with the
12 provisions of the APA and that they will waive other rights afforded to them in connection with
13 the hearing such as the right to present evidence in defense of the allegations in the Accusation
14 and the right to cross-examine witnesses.

15 4. Respondents, pursuant to the limitations set forth below, hereby admit that
16 the factual allegations pertaining to them in the Accusation filed in this proceeding are true and
17 correct (except for Section 2831.1 of Title 10, Chapter 6 of the California Code of Regulations
18 (herein the "Regulations"), as described in Paragraphs 10 and 14, subsection (c) on Pages 4 and 5
19 of the Accusation) and the Commissioner shall not be required to provide further evidence of
20 such allegations.

21 5. It is understood by the parties that the Commissioner may adopt the
22 Stipulation and Agreement in Settlement and Order as his decision in this matter thereby
23 imposing the penalty and sanctions on Respondents' real estate licenses and license rights as set
24 forth in the below "Order". In the event that the Commissioner in his discretion does not adopt
25 the Stipulation and Agreement in Settlement and Order, it shall be void and of no effect, and
26 Respondents shall retain the right to a hearing and proceeding on the Accusation under all the
27 provisions of the APA and shall not be bound by any admission or waiver made herein.

1 6. The Order or any subsequent Order of the Commissioner made pursuant
2 to this Stipulation and Agreement in Settlement and Order shall not constitute an estoppel,
3 merger, or bar to any further administrative or civil proceedings by the Department with
4 respect to any matters which were not specifically alleged to be causes for accusation in this
5 proceeding.

6 7. Respondents understand that by agreeing to this Stipulation and Agreement
7 in Settlement and Order, Respondents jointly and severally agree to pay, pursuant to Section
8 10148 of the Business and Professions Code ("herein the Code"), the cost of the audit which
9 resulted in the determination that Respondents committed the trust fund violations found in
10 Paragraph I, below, of the Determination of Issues. The amount of said cost is \$4,418.90.

11 8. Respondents further understand that by agreeing to this Stipulation and
12 Agreement in Settlement and Order, the findings set forth below in the Determination of Issues
13 become final, and that the Commissioner may charge said Respondents, jointly and severally,
14 for the costs of any audit conducted pursuant to Section 10148 of the Code to determine if the
15 trust fund violations found in Paragraph I, below, of the Determination of Issues have been
16 corrected. The maximum costs of said audit shall not exceed \$4,418.90.

17 DETERMINATION OF ISSUES

18 I

19 The acts and omissions of Respondents as described in the Accusation are
20 grounds for the suspension or revocation of the licenses and license rights of Respondents under
21 the following provisions of the Code, and/or Regulations:

22 (a) as to Paragraph 10(a) and PCHI under Section 10145 of the Code and
23 Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;

24 (b) as to Paragraph 10(b) and PCHI under Section 10145 of the Code and
25 Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code;

26 (c) as to Paragraph 10(d) and PCHI under Section 10145 of the Code and
27 Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;

1 (d) as to Paragraph 10(e) and PCHI under Section 10176(e) of the Code and
2 2835 of the Regulations;

3 (e) as to Paragraph 11(a) and PCHI under Section 10160 of the Code and
4 Section 2753 of the Regulations in conjunction with Section 10177(d) of the Code;

5 (f) as to Paragraph 11(b) and PCHI under Section 2726 of the Regulations in
6 conjunction with Section 10177(d) of the Code;

7 (g) as to Paragraph 12 and PIERCE under Sections 10159.2, 10177(g) and (h)
8 of the Code and Section 2725 of the Regulations; and,

9 (h) as to Paragraph 13 and MURPHY under Sections 10159.2, 10177(g) and
10 (h) of the Code and Section 2725 of the Regulations.

11 ORDER

12 I
13

14 A. All licenses and licensing rights of Respondent PCHI under the Real Estate Law are
15 suspended for a period of sixty (60) days from the effective date of this Order; provided,
16 however, that:

17 1. Thirty (30) days of said suspension shall be stayed for two (2) years upon the
18 following terms and conditions:

19 (a) Respondent PCHI shall obey all laws, rules and regulations governing the
20 rights, duties and responsibilities of a real estate licensee in the State of
21 California; and,

22 (b) That no final subsequent determination be made, after hearing or upon
23 stipulation, that cause for disciplinary action occurred within two (2) years
24 from the effective date of this Order. Should such a determination be made,
25 the Commissioner may, in his discretion, vacate and set aside the stay order
26 and reimpose all or a portion of the stayed suspension. Should no such
27 determination be made, the stay imposed herein shall become permanent.

- 1 2. The remaining thirty (30) days of said 60-day suspension shall be stayed upon the
2 condition that Respondent PCHI petitions pursuant to Section 10175.2 of the Code
3 and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of
4 \$50.00 for each day of the suspension for a total monetary penalty of \$1,500.00:
- 5 (a) Said payment shall be in the form of a cashier's check or certified check made
6 payable to the Recovery Account of the Real Estate Fund. Said check must be
7 delivered to the Department prior to the effective date of the Order in this
8 matter.
- 9 (b) No further cause for disciplinary action against the real estate licenses of
10 Respondent PCHI occurs within two (2) years from the effective date of the
11 Decision in this matter.
- 12 (c) If Respondent PCHI fails to pay the monetary penalty as provided above prior to
13 the effective date of this Order, the stay of the suspension shall be vacated as to
14 Respondent PCHI and the order of suspension shall be immediately executed,
15 under this Paragraph I of this Order, in which event Respondent PCHI shall not
16 be entitled to any repayment nor credit, prorated or otherwise, for the money
17 paid to the Department under the terms of this Order.
- 18 (d) If Respondent PCHI pays the monetary penalty and any other moneys due under
19 this Stipulation and Agreement in Settlement and Order and if no further cause
20 for disciplinary action against the real estate license of Respondent PCHI occurs
21 within two (2) years from the effective date of this Order, the entire stay hereby
22 granted under Paragraph I of this Order, as to Respondent PCHI only, shall
23 become permanent.
- 24 3. Pursuant to Section 10148 of the Code, Respondent PCHI, shall, jointly and severally
25 with Respondents PIERCE and MURPHY pay the sum of \$4,418.90 for the
26 Commissioner's cost of the audit which led to this disciplinary action. Respondents
27 shall pay such cost within sixty (60) days of receiving an invoice therefor from the

1 Commissioner. The Commissioner may indefinitely suspend all licenses and
2 licensing rights pending a hearing held in accordance with Section 11500, et seq., of
3 the Government Code, if payment is not timely made as provided for herein, or as
4 provided for in a subsequent agreement between Respondent PCHI and the
5 Commissioner. The suspension shall remain in effect until payment is made in full or
6 until Respondent PCHI enters into an agreement satisfactory to the Commissioner to
7 provide for payment, or until a decision providing otherwise is adopted following a
8 hearing held pursuant to this condition.

- 9 4. Respondents PCHI, PIERCE, and MURPHY, jointly and severally, shall pay the
10 Commissioner's costs, not to exceed \$4,418.90, of any audit conducted pursuant to
11 Section 10148 of the Code to determine if Respondents have corrected the violations
12 described in Paragraph I of the Determination of Issues, above. In calculating the
13 amount of the Commissioner's reasonable cost, the Commissioner may use the
14 estimated average hourly salary for all persons performing audits of real estate
15 brokers, and shall include an allocation for travel time to and from the auditor's place
16 of work. Respondents shall pay such cost within sixty (60) days of receiving an
17 invoice therefore from the Commissioner detailing the activities performed during the
18 audit and the amount of time spent performing those activities. If Respondents fail to
19 pay such cost within the sixty (60) days, the Commissioner may indefinitely suspend
20 all licenses and licensing rights of Respondent PCHI under the Real Estate Law until
21 payment is made in full or until Respondent PCHI enters into an agreement
22 satisfactory to the Commissioner to provide for payment. Upon payment in full, the
23 indefinite suspension provided in this paragraph shall be stayed.

24 II

- 25 A. All licenses and licensing rights of Respondent PIERCE under the Real Estate Law are
26 suspended until such time as Respondent PIERCE provides proof satisfactory to the
27 Commissioner that Respondent PIERCE has, within one hundred twenty (120) days prior to

1 the effective date of the Decision herein completed the continuing education course on trust
2 fund accounting and handling specified in subdivision (a) of Section 10170.5 of the Code.

3 B. All licenses and licensing rights of Respondent PIERCE under the Real Estate Law are
4 suspended for a period of sixty (60) days from the effective date of this Order; provided,
5 however, that:

6 1. Thirty (30) days of said suspension shall be stayed for two (2) years upon the
7 following terms and conditions:

8 (a) Respondent PIERCE shall obey all laws, rules and regulations governing the
9 rights, duties and responsibilities of a real estate licensee in the State of
10 California; and

11 (b) That no final subsequent determination be made, after hearing or upon
12 stipulation, that cause for disciplinary action occurred within two (2) years from
13 the effective date of this Order. Should such a determination be made, the
14 Commissioner may, in his discretion, vacate and set aside the stay order and
15 reimpose all or a portion of the stayed suspension. Should no such
16 determination be made, the stay imposed herein shall become permanent.

17 2. The remaining thirty (30) days of said 60-day suspension shall be stayed upon the
18 condition that Respondent PIERCE petition pursuant to Section 10175.2 of the Code
19 and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of
20 \$50.00 for each day of the suspension for a total monetary penalty of \$1,500.00:

21 (a) Said payment shall be in the form of a cashier's check or certified check made
22 payable to the Recovery Account of the Real Estate Fund. Said check must be
23 delivered to the Department prior to the effective date of the Order in this
24 matter.

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

- 1 (c) If Respondent PIERCE fails to pay the monetary penalty as provided above
2 prior to the effective date of this Order, the stay of the suspension shall be
3 vacated as to Respondent PIERCE and the order of suspension shall be
4 immediately executed, under this Paragraph II of this Order, in which event
5 Respondent PIERCE shall not be entitled to any repayment nor credit, prorated
6 or otherwise, for the money paid to the Department under the terms of this Order.
- 7 (d) If Respondent PIERCE pays the monetary penalty and any other moneys due
8 under this Stipulation and Agreement in Settlement and Order and if no further
9 cause for disciplinary action against the real estate license of Respondent
10 PIERCE occurs within two (2) years from the effective date of this Order, the
11 entire stay hereby granted under Paragraph II of this Order, as to Respondent
12 PIERCE only, shall become permanent.

13 3. Pursuant to Section 10148 of the Code, Respondents PIERCE, PCHI, and MURPHY
14 shall, jointly and severally, pay the sum of \$4,418.90 for the Commissioner's cost of
15 the audit which led to this disciplinary action. Respondents shall pay such cost within
16 sixty (60) days of receiving an invoice therefor from the Commissioner. The
17 Commissioner may indefinitely suspend all licenses and licensing rights pending a
18 hearing held in accordance with Section 11500, et seq., of the Government Code, if
19 payment is not timely made as provided for herein, or as provided for in a subsequent
20 agreement between Respondent PIERCE and the Commissioner. The suspension
21 shall remain in effect until payment is made in full or until Respondent PIERCE
22 enters into an agreement satisfactory to the Commissioner to provide for payment, or
23 until a decision providing otherwise is adopted following a hearing held pursuant to
24 this condition.

25 4. Respondents PIERCE, PCHI, and MURPHY, jointly and severally, shall pay the
26 Commissioner's costs, not to exceed \$4,418.90, of any audit conducted pursuant to
27 Section 10148 of the Code to determine if Respondents have corrected the violations

1 described in Paragraph I of the Determination of Issues, above. In calculating the
2 amount of the Commissioner's reasonable cost, the Commissioner may use the
3 estimated average hourly salary for all persons performing audits of real estate
4 brokers, and shall include an allocation for travel time to and from the auditor's place
5 of work. Respondents shall pay such cost within sixty (60) days of receiving an
6 invoice therefore from the Commissioner detailing the activities performed during the
7 audit and the amount of time spent performing those activities. If Respondents fail to
8 pay such cost within the sixty (60) days, the Commissioner may indefinitely suspend
9 all licenses and licensing rights of Respondent PIERCE under the Real Estate Law
10 until payment is made in full or until Respondent PIERCE enters into an agreement
11 satisfactory to the Commissioner to provide for payment. Upon payment in full, the
12 indefinite suspension provided in this paragraph shall be stayed.

- 13 5. Respondent PIERCE shall, within six (6) months from the effective date of the
14 Decision, take and pass the Professional Responsibility Examination administered by
15 the Department, including the payment of the appropriate examination fee. If
16 Respondent PIERCE fails to satisfy this condition, the Commissioner may order the
17 suspension of the license until Respondent PIERCE passes the examination.

18 III

- 19 A. All licenses and licensing rights of Respondent MURPHY under the Real Estate Law are
20 suspended until such time as Respondent MURPHY provides proof satisfactory to the
21 Commissioner that Respondent MURPHY has, within one hundred twenty (120) days prior
22 to the effective date of the Decision herein completed the continuing education course on
23 trust fund accounting and handling specified in subdivision (a) of Section 10170.5 of the
24 Code.
- 25 B. All licenses and licensing rights of Respondent MURPHY under the Real Estate Law are
26 suspended for a period of sixty (60) days from the effective date of this Order; provided,
27 however, that:

1. Thirty (30) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:
 - (a) Respondent MURPHY shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and
 - (b) 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 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.
2. The remaining thirty (30) days of said 60-day suspension shall be stayed upon the condition that Respondent MURPHY petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$50.00 for each day of the suspension for a total monetary penalty of \$1,500.00:
 - (a) Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to the Department prior to the effective date of the Order in this matter.
 - (b) No further cause for disciplinary action against the real estate licenses of Respondent MURPHY occurs within two (2) years from the effective date of the Decision in this matter.
 - (c) If Respondent MURPHY fails to pay the monetary penalty as provided above prior to the effective date of this Order, the stay of the suspension shall be vacated as to Respondent MURPHY and the order of suspension shall be immediately executed, under this Paragraph III of this Order, in which event Respondent MURPHY shall not be entitled to any repayment nor credit,

1 prorated or otherwise, for the money paid to the Department under the terms of
2 this Order.

3 (d) If Respondent MURPHY pays the monetary penalty and any other moneys due
4 under this Stipulation and Agreement in Settlement and Order and if no further
5 cause for disciplinary action against the real estate license of Respondent
6 MURPHY occurs within two (2) years from the effective date of this Order, the
7 entire stay hereby granted under Paragraph III of this Order, as to Respondent
8 MURPHY only, shall become permanent.

9 3. Pursuant to Section 10148 of the Code, Respondents MURPHY, PCHI and PIERCE
10 shall, jointly and severally, pay the sum of \$4,418.90 for the Commissioner's cost of
11 the audit which led to this disciplinary action. Respondents shall pay such cost within
12 sixty (60) days of receiving an invoice therefor from the Commissioner. The
13 Commissioner may indefinitely suspend all licenses and licensing rights pending a
14 hearing held in accordance with Section 11500, et seq., of the Government Code, if
15 payment is not timely made as provided for herein or as provided for in a subsequent
16 agreement between Respondent MURPHY and the Commissioner. The suspension
17 shall remain in effect until payment is made in full or until Respondent MURPHY
18 enters into an agreement satisfactory to the Commissioner to provide for payment, or
19 until a decision providing otherwise is adopted following a hearing held pursuant to
20 this condition.

21 4. Respondents MURPHY, PCHI and PIERCE, jointly and severally, shall pay the
22 Commissioner's costs, not to exceed \$4,418.90, of any audit conducted pursuant to
23 Section 10148 of the Code to determine if Respondents have corrected the violations
24 described in Paragraph I of the Determination of Issues, above. In calculating the
25 amount of the Commissioner's reasonable cost, the Commissioner may use the
26 estimated average hourly salary for all persons performing audits of real estate brokers,
27 and shall include an allocation for travel time to and from the auditor's place of work.

1 Respondents shall pay such cost within sixty (60) days of receiving an invoice
2 therefore from the Commissioner detailing the activities performed during the audit
3 and the amount of time spent performing those activities. If Respondents fail to pay
4 such cost within the sixty (60) days, the Commissioner may indefinitely suspend all
5 licenses and licensing rights of Respondent MURPHY under the Real Estate Law
6 until payment is made in full or until Respondent MURPHY enters into an agreement
7 satisfactory to the Commissioner to provide for payment. Upon payment in full, the
8 indefinite suspension provided in this paragraph shall be stayed.

- 9 5. Respondent MURPHY shall, within six (6) months from the effective date of the
10 Decision, take and pass the Professional Responsibility Examination administered
11 by the Department, including the payment of the appropriate examination fee. If
12 Respondent MURPHY fails to satisfy this condition, the Commissioner may order
13 the suspension of the license until Respondent MURPHY passes the examination.

14 11-18-09

15 DATED

16 MARY F. CLARKE, Counsel
DEPARTMENT OF REAL ESTATE

17 * * *

18 We have read the Stipulation and Agreement in Settlement and Order and its
19 terms are understood by us and are agreeable and acceptable to us. We understand that we are
20 waiving rights given to us by the California APA (including but not limited to Sections 11506,
21 11508, 11509, and 11513 of the Government Code), and we willingly, intelligently, and
22 voluntarily waive those rights, including the right of requiring the Commissioner to prove the
23 allegations in the Accusation at a hearing at which we would have the right to cross-examine
witnesses against us and to present evidence in defense and mitigation of the charges.

24 PACIFIC CAPITAL HOLDINGS, INC., Respondent

25 11/9/09

26 DATED

27 By:

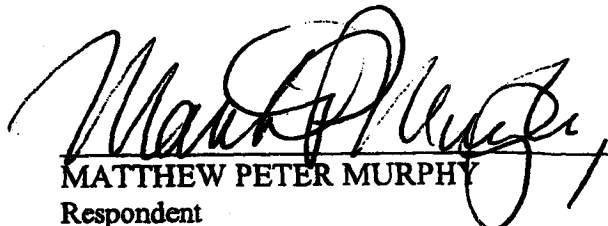
ROBERT STEVEN PIERCE
Designated Officer - Broker

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11/9/09
DATED

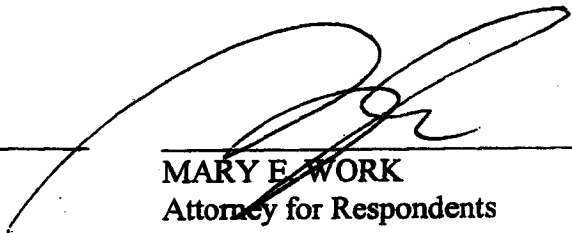

ROBERT STEVEN PIERCE
Respondent

11-5-09
DATED


MATTHEW PETER MURPHY
Respondent

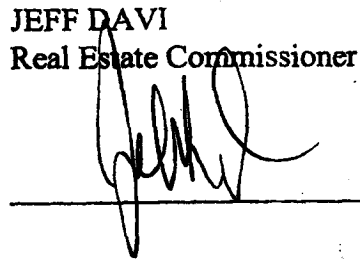
I have reviewed the Stipulation and Agreement and Order as to form and content
and have advised my clients accordingly.

11/12/09
DATED


MARY E. WORK
Attorney for Respondents

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
January 5, 2010

IT IS SO ORDERED 12-9-09

JEFF DAVI
Real Estate Commissioner


1 **DECLARATION OF SERVICE BY CERTIFIED MAIL and BY REGULAR U.S. MAIL**

2 **CASE NUMBER: 11-O-14288**

3 I, the undersigned, over the age of eighteen (18) years, whose business address and place
4 of employment is the State Bar of California, 180 Howard Street, San Francisco, California
5 94105, declare that I am not a party to the within action; that I am readily familiar with the State
6 Bar of California's practice for collection and processing of correspondence for mailing with the
7 United States Postal Service; that in the ordinary course of the State Bar of California's practice,
8 correspondence collected and processed by the State Bar of California would be deposited with
9 the United States Postal Service that same day; that I am aware that on motion of party served,
10 service is presumed invalid if postal cancellation date or postage meter date on the envelope or
11 package is more than one day after date of deposit for mailing contained in the affidavit; and that
12 in accordance with the practice of the State Bar of California for collection and processing of
13 mail, I deposited or placed for collection and mailing in the City and County of San Francisco,
14 on the date shown below, a true copy of the within

15 **NOTICE OF DISCIPLINARY CHARGES**

16 in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,
17 Article No.: 7160 3901 9849 1845 7990, at San Francisco, on the date shown below, addressed
18 to:

19 **Edward O. Lear**
20 **3200 West Century Blvd., Suite 345**
21 **Los Angeles, CA 90045**

22 in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

23 **N/A**

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

26 **DATED: October 5, 2011**

27 **Signed:**

28 
Meagan McGowan
Declarant

DECLARATION OF SERVICE BY REGULAR MAIL

CASE NUMBER: 11-O-14288-PEM

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco, on the date shown below, a true copy of the within

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND
DISPOSITION AND ORDER APPROVING PRIVATE REPROVAL**

in a sealed envelope placed for collection and mailing at San Francisco, on the date shown below, addressed to:

**Ed Lear, Esq.
5200 West Century Blvd., Suite 345
Los Angeles, CA 90045**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

DATED: December 22, 2011

Signed: Araceli Pallen
Araceli Pallen
Declarant

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on December 29, 2011, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045

- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- ☐ by overnight mail at , California, addressed as follows:

- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Robin Brune, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 29, 2011.


George Hue
Case Administrator
State Bar Court