BEFORE THE REAL ESTATE COMMISSION

STATE OF NEVADA

SHARATH CHANDRA, Administrator, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEVADA, Petitioner, vs. DAVID MICHAEL TORTIA, BS.0146142, Respondent.	**Case No. 2023-314** FILED NOV 2 1 2024 REAL ESTATE COMMISSION BY Kelley Valadez

STIPULATION AND ORDER FOR SETTLEMENT OF DISCIPLINARY ACTION

This Stipulation for Settlement of Disciplinary Action ("Stipulation") is entered into by and between the State of Nevada, Department of Business and Industry, Real Estate Division ("Division"), through its Administrator Sharath Chandra ("Petitioner"), by and through their attorney of record, Phil W. Su, Esq., and DAVID MICHAEL TORTIA, ("RESPONDENT").

RESPONDENT, at all relevant times mentioned in this Complaint, was actively licensed as a Broker-Salesperson (BS.0146142). RESPONDENT is, therefore, subject to the jurisdiction of the Division and the Commission, and the provisions of NRS Chapter 645 and NAC Chapter 645. As of the date of this Complaint, RESPONDENT'S broker's license is in "active" status.

SUMMARY OF FACTUAL ALLEGATIONS SET FORTH IN COMPLAINT

1. At all times relevant to this Complaint, RESPONDENT was registered as a broker-salesperson with Coldwell Banker- Premier Realty, under the supervision of Broker Robert H. Hamrick [NRED0002-0003].

2. At all times relevant, RESPONDENT also served as principal of Mokelumne Investments, LLC, through which he made real estate investment proposals to COMPLAINANTS Vianey Cabrera and Judith Maceo (collectively, the COMPLAINANTS). [NRED 0005-0006].

3. On April 20, 2023, the Division received a Statement of Fact from COMPLAINANTS Vianey Cabrera and Judith Maceo (collectively, the COMPLAINANTS), alleging that they had remitted

a total of $135,000.00 to Mokelumne Investments, LLC to jointly purchase five investment properties on behalf of the COMPLAINANTS and Mokelumne Investments, LLC. [NRED0008-0011].

4. The investment properties were:

- 7391 Villa Pintura, Las Vegas, NV 89131;
- 3021 Savona Circle, Las Vegas, NV, 89128;
- 4009 Coleman, N. Las Vegas, NV 89032;
- 4296 Aspen Street, Las Vegas, NV 89147; and
- 4730 San Rafael, Las Vegas, NV 89120,

for each of which RESPONDENT represented Mokelumne Investments, LLC and the COMPLAINANTS in the real estate transactions. [NRED0008-0011].

5. The $135,000.00 in funds were remitted to COMPLAINANT December 14, 2020, and March 1, 2021, via zelle, cashier's check, or bank wire. [*NRED0010-0046*].

6. On February 17, 2023, RESPONDENT entered into a promissory note agreement with COMPLAINANTS for $200,000.00, which purported to account for the funds invested with RESPONDENT and expected profit from those investments. [NRED0010-0011].

7. The COMPLAINANTS allege that RESPONDENT has failed to submit any payments under the promissory note as of the date of their Statement of Fact to the Division. [NRED 0011].

8. The COMPLAINANTS further allege that RESPONDENT intentionally misrepresented purchases of the properties by sending them "bogus" Deeds of Trust for the 7931 Villa Pintura and 3021 Savona properties, along with "Straight Notes" for both properties, prepared by RESPONDENT himself, rather than by any Trustee. [NRED0010; 0012-0026].

9. The COMPLAINANTS further allege that instead of repaying the note, RESPONDENT invested in another property, 4045 Abernethy Forest Place, Las Vegas, NV 89141. [NRED 0011].

10. On April 28, 2023, the Division issued an open investigation letter to RESPONDENT, c/o his attorney, Charles Damus, Esq., regarding the Statement of Fact and requesting his response via affidavit. [*NRED0047-0048*].

11. That same day, the Division issued an open investigation letter to RESPONDENT'S broker of record at Coldwell Banker- Premier Realty, Robert Hambrick. [*NRED0049-0050*].

12. On May 16, 2023, RESPONDENT submitted a responsive affidavit, asserting that, for various reasons, three of the contemplated investment properties did not close and that he entered into the promissory agreement in good faith and intended to comply with the settlement, but had not yet made any payments to COMPLAIANTS upon the advice of his attorney. [NRED0051-0057].

13. On May 16, 2023, Broker Robert Hamrick submitted a responsive affidavit, asserting that he was unaware of the investment relationship between RESPONDENT and COMPLAINANTS until contacted by the Division; that the Complainants were investors, rather than clients of Coldwell Bank-Premier Realty; and that the brokerage was not in receipt of the 4296 Aspen transaction documentation since it did not proceed past negotiations. [NRED0058-0065].

14. Broker Hambrick also provided transaction files for the following properties: 4009 Coleman; 4730 San Rafael (both buyer and seller); 7931 Villa Pintura; and 4045 Abernethy Forest Place. [NRED0066-0296]

15. On October 4, 2023, the Division mailed an NRS 233B letter via certified mail to RESPONDENT, stating the Division's intent to file a complaint with the Commission for violations of NRS 645.633(1)(h) pursuant to NAC 645.605(1) and NRS 645.633(1)(i) pursuant to NAC 645.605(1). [*NRED0297-0300*].

SUMMARY OF ALLEGED VIOLATIONS OF LAW

1. RESPONDENT violated NRS 645.633(1)(h) pursuant to NAC 645.605(1) by engaging in gross negligence and/or incompetence by failing to do his utmost to protect the public against fraud, misrepresentation or unethical practices related to real estate, when he failed to abide by the terms of his February 2023 promissory note.

2. RESPONDENT violated NRS 645.633(1)(i) pursuant to NAC 645.605(1) by willfully and/or knowingly engaging in deceitful, fraudulent and dishonest dealing when he failed to abide by the terms of his February 2023 promissory note.

3. RESPONDENT violated NRS 645.633(1)(i) pursuant to NAC 645.605(1) by willfully and/or knowingly engaging in deceitful, fraudulent and dishonest dealing by making intentionally vague and misleading representations regarding the significance of exemplar Deeds of Trust and Notes prepared by RESPONDENT, rather than by any Trustee.

PROPOSED SETTLEMENT

By entering into this Stipulation, the RESPONDENT does not admit the above factual allegations but agrees to waive his right to contest the above alleged violations if the Stipulation is approved by the Commission. Accordingly, in an effort to avoid the time and expense of litigating these issues before the Commission, as well as any possible further legal appeals from any such decision, and the parties desire to compromise and settle the instant controversy upon the following terms and conditions:

1. RESPONDENT agrees to pay the Division a total amount of SEVEN THOUSAND FOUR HUNDRED SEVENTY FOUR DOLLARS and 20/100 cents ($7,474.20) ("Amount Due"), consisting of zero administrative fine imposed by the Division, the Division's pre-hearing costs and fees in the amount of $800.00, and pre-hearing attorney's fees in the amount of $6,674.20.

   a. The Amount Due shall be payable to the Division in full within sixty (60) days of the date of the order approving this settlement.

   b. No grace period is permitted. If the payment is not actually received by the Division on or before its due date, it shall be construed as an event of default by Respondent.

2. RESPONDENT agrees to voluntarily surrender all current licenses, permits, and certificates issued by Division to him, including but not limited to his Broker-Salesperson license (BS.0146142), within five (5) business days from the date of the order approving this settlement. RESPONDENT further agrees that he will not re-apply for any license, permit, or certificate with the Division for a period of ten (10) years from the date of the order approving this settlement.

3. RESPONDENT and the Division agree that by entering into this Stipulation, the Division does not concede any defense or mitigation RESPONDENT may assert and that once this Stipulation is approved and fully performed, the Division will close its file in this matter.

4. The Division agrees not to pursue any other or greater remedies or fines in connection with RESPONDENT'S alleged conduct referenced herein. The Division further agrees that unless RESPONDENT fails to make timely payment, the Division will not bring any claim or cause directly or indirectly based upon any of the facts, circumstances, or allegations discovered during the Division's investigation and prosecution of this case.

5. RESPONDENT agrees and understands that by entering into this Stipulation RESPONDENT is waiving his right to a hearing at which RESPONDENT may present evidence in his defense, his right to a written decision on the merits of the complaint, his rights to reconsideration and/or rehearing, appeal and/or judicial review, and all other rights which may be accorded by the Nevada Administrative Procedure Act, the Nevada Real Estate Brokers and Salespersons statutes and accompanying regulations, and the federal and state Constitutions. RESPONDENT understands that this Agreement and other documentation may be subject to public records laws. The Commission members who review this matter for approval of this Stipulation may be the same members who ultimately hear, consider, and decide the Complaint if this Stipulation is either not approved by the Commission or is not timely performed by RESPONDENT. RESPONDENT fully understands that he has the right to be represented by legal counsel in this matter at his own expense.

6. RESPONDENT shall bear his own attorney's fees and costs.

7. Approval of Stipulation. Once executed, this Stipulation will be filed with the Commission and will be placed on the agenda for approval at its next public meeting. The Division will recommend to the Commission approval of the Stipulation. RESPONDENT agrees that the Commission may approve, reject, or suggest amendments to this Stipulation that must be accepted or rejected by RESPONDENT before any amendment may be considered effective.

8. Withdrawal of Stipulation. If the Commission rejects this Stipulation or suggests amendments unacceptable to RESPONDENT, RESPONDENT may withdraw from this Stipulation, and the Division may pursue its Complaint before the Commission.

9. Stipulation is Not Evidence. Neither this Stipulation nor any statements made concerning this Stipulation may be discussed or introduced into evidence at any hearing on the Complaint, if the Division must ultimately present its case based on the Complaint filed in this matter.

10. Release. In consideration of the execution of this Stipulation, RESPONDENT for himself, his heirs, executors, administrators, successors, and assigns, hereby releases, remises, and forever discharges the State of Nevada, the Department of Business and Industry, and the Division, and each of their respective members, agents, employees, and counsel in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions,

claims, and demands whatsoever, known and unknown, in law or equity, that RESPONDENT ever had, now has, may have, or claim to have against any or all of the persons or entities named in this section, arising out of or by reason of the Division's investigation of this action, this disciplinary action, and all matters related thereto.

11. Indemnification. RESPONDENT hereby agrees to indemnify and hold harmless the State of Nevada, the Department of Business and Industry, Petitioner, the Division, and each of their respective members, agents, employees, and counsel, in their individual and representative capacities, against any and all claims, suits, and actions brought against said persons and/or entities by reason of the Division's investigation, this disciplinary action, and all other matters relating thereto, and against any and all expenses, damages, and costs, including court costs and attorney fees, which may be sustained by the persons and/or entities named in this section as a result of said claims, suits, and actions.

12. Default. In the event of default, RESPONDENT agrees that all of his active licenses and permits issued by the Division shall be immediately suspended, and the unpaid balance of the administrative fine and costs, together with any attorney's fees and costs that may have been assessed, shall be due in full to the Division within ten calendar days of the date of default. Debt collection actions for unpaid monetary assessments in this case may be instituted by the Division or its assignee. RESPONDENT agrees that the foregoing suspensions shall continue until the unpaid monetary assessments are paid in full.

13. RESPONDENT confirms that he has signed and dated this Stipulation only after reading and fully understanding all terms herein.

DATED this 12 day of November, 2024.

By: _____
DAVID MICHAEL TORTIA
Respondent

DATED this 12 day of November, 2024.

NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION

By: _____
SHARATH CHANDRA
Administrator

Approved as to form:

AARON D. FORD
Attorney General

By: /s/ Phil W. Su
PHIL W. SU (Bar No. 10450)
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ORDER APPROVING STIPULATION
Case No. 2023-314

The Stipulation for Settlement of Disciplinary Action having come before the Real Estate Commission, Department of Business and Industry, State of Nevada, during its regular agenda on November 19-21, 2024, and the Commission being fully apprised in the premises, and good cause appearing,

IT IS ORDERED that the above Stipulation for Settlement of Disciplinary Action is approved in full.

Dated: this 21 day of November 2024.

REAL ESTATE COMMISSION
STATE OF NEVADA

By: _____
President, Nevada Real Estate Commission