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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JASON WADE HUGHES,

Petitioner,

v.

CHIKA SUNQUIST, Commissioner of the California Department of Real Estate, and, CALIFORNIA DEPARTMENT OF REAL ESTATE,

Respondents.

CASE NO. 37-2024-00022286-CU-WM-CTL

VERIFIED PETITION FOR PEREMPTORY WRIT OF ADMINISTRATIVE MANDAMUS

[CODE CIV. PROC., § 1094.5]

Petitioner Jason Wade Hughes ("Petitioner") brings this petition seeking a peremptory writ of administrative mandamus, pursuant to Code of Civil Procedure section 1094.5 commanding Respondents Chika Sunquist, Commissioner of the California Department of Real Estate ("Commissioner") and the California Department of Real Estate ("DRE") to (1) set aside the March 28, 2024 Order revoking Petitioner's real estate license (the "Order") and (2) dismiss the Accusation against Petitioner or in the alternative, adopt the Administrative Law Judge's Proposed Decision. In support, Petitioner alleges as follows:

INTRODUCTION

1. This petition concerns an unprecedented abuse of discretion by the California Department of Real Estate. Ignoring the relevant legal framework and disregarding the factual findings of its own Administrative Law Judge, the DRE seeks to use the disciplinary process to further its own political ends by improperly punishing Petitioner.

2. In March 2023, as part of a civil settlement to resolve a longstanding civil and criminal investigation, Petitioner pleaded guilty to a single misdemeanor count of violation of Government Code section 1090, a municipal conflict-of-interest violation. Petitioner was placed on summary probation and the conviction was expunged on May 1, 2024.

3. Seeking to capitalize on the political moment (and after apparently relying on untrue clickbait media headlines), on June 7, 2023, the DRE served Petitioner—a real estate broker with an unblemished 35-year track record—with an Accusation, alleging that his misdemeanor conviction was "substantially related" to the practice of real estate and therefore cause to revoke his license altogether.

4. Petitioner contested the Accusation and proceeded to an evidentiary hearing before the DRE. Indeed, Respondents' Order is not even supported by the Administrative Law Judge's findings in this proceeding.[1]

5. After a full-day evidentiary hearing (the "Hearing") with live witness testimony, hundreds of pages of exhibits, and attorney argument, the Administrative Law Judge Matyszewski

[1] The complete administrative record will be requested, prepared, and submitted to this Court in accordance with Government Code section 11523.

("ALJ") issued a well-reasoned decision recommending the DRE's Accusation against Petitioner be resolved by a public reproval ("Proposed Decision"). That decision, which was based in large part on the ALJ's determination of Petitioner's credibility as a witness, was entitled to great deference by the Commissioner.

6. However, the Commissioner issued the Order on March 28, 2024 declining to adopt the ALJ's proposed decision and revoking Petitioner's real estate license. The Commissioner's Order rests upon an improper application of statutory law and was rendered without the benefit of all currently-available evidence—most notably the May 1, 2024 expungement of Petitioner's underlying conviction (the "Expungement Order").

7. As the evidence at the Hearing demonstrated, this is precisely the type of case in which discipline is ***not*** warranted. To resolve ongoing litigation, in March 2023, Petitioner pleaded guilty to a single misdemeanor count of violating Government Code section 1090, a municipal conflict-of-interest statute pertaining to elected officials and municipal employees. The punishment reflected the severity of the conviction—a $400 fine, automatic expungement in one year, and restitution that was fully satisfied by a civil settlement that had already been paid. On May 1, 2024, the misdemeanor was expunged.

8. After taking all relevant facts and circumstances into consideration as the law requires, it is apparent that the section 1090 conviction is ***not*** substantially related to the practice of real estate: the conviction involved no moral turpitude; Petitioner had no intent to do harm, and took measures (making numerous verbal and written disclosures and obtaining written consent to his intent to seek compensation) to ensure his actions were both ethical and legal; the underlying events took place between seven and eleven years ago; and Petitioner was not acting in a licensed capacity in the underlying transactions. In finding a "substantial relationship" here, the ALJ relied on an outdated reading of the disciplinary statute and thereby erred as a matter of law. The Commissioner failed to reverse this portion of the decision.

9. Even if the conviction were substantially related,[2] however, Petitioner satisfies nearly all the relevant statutory rehabilitation factors, and the Commissioner should have adopted the ALJ's Proposed Decision, which limited the discipline imposed to a public reproval. Through character letters and his own testimony, Petitioner demonstrated that he is a respected community leader, a devoted husband, father, and grandfather, and a dedicated San Diego employer and business owner. Petitioner has since put into place safeguards to prevent similar violations from occurring again, has made full restitution, paid all fines, and the misdemeanor conviction has been expunged. As the ALJ succinctly put it, Petitioner "presented as a sincere witness" and "demonstrated appropriate remorse and rehabilitation and has enjoyed an otherwise lengthy, successful, discipline-free career."

10. The fundamental purpose of the underlying proceedings is to protect the public. *See Small v. Smith* (1971) 16 Cal.App.3d 450, 457 ("The object of an administrative proceeding aimed at revoking a real estate license is to protect the public."). Yet disregarding the foregoing, including that the ALJ recommended ***no*** discipline other than public reproval, and with no proof that Petitioner posed any threat to the public, the DRE revoked Petitioner's real estate license. Notably, the events that led to the misdemeanor took place between seven and eleven years ago. Petitioner has neither committed a crime before nor since those events. And he has likewise never faced discipline in his 35 years as a California-licensed salesperson and broker.

11. The Commissioner's Order is diametrically opposed to the ALJ's Proposed Decision. The Order rests upon the presumption that allowing the Petitioner to retain his license poses a threat to the public, but then provides ***zero*** evidence to support that claim. The only rational

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[2] Notably, Respondents have both the burden of proof and the burden of production on this question. *See Daniels v. Dep't of Motor Vehicles*, 33 Cal. 3d 532, 536 (1983). In a matter involving suspension or revocation of a professional license, an agency must prove its case "by clear and convincing proof to a reasonable certainty." *Ettinger v. Board of Med. Quality Assur.*, 135 Cal. App. 3d 853, 855-857 (1982). "Until the agency has met its burden of going forward with the evidence necessary to sustain a finding, the licensee has no duty to rebut the allegations or otherwise respond." *Daniels*, 33 Cal. 3d at 536 (citing *La Prade v. Dep't of Water & Power of City of Los Angeles*, 27 Cal. 2d 47, 51 (1945). "The mere fact that the licensee has the right to subpoena witnesses . . . does not relieve the [agency] of meeting its burden of producing competent evidence supporting" the discipline sought. *Id.*

Respondents failed to meet this burden. Petitioner moved to dismiss the Accusation, including at the close of Respondents' case in chief. The ALJ should have dismissed the Accusation.

conclusion is that the Commissioner made this life-altering enforcement decision based on inaccurate media hype, is doing a political favor to further her career in Sacramento, or both.

12. The relief Petitioner seeks in this action strikes at the core of the purpose of these proceedings: while protection of the public is a proper aim of an administrative proceeding revoking a real estate license, an unduly punitive action is not. For the foregoing reasons, Petitioner respectfully requests that the Court order the DRE to command Respondents to (1) set aside the March 28, 2024 Order revoking Petitioner's real estate license and (2) dismiss the Accusation against Petitioner or in the alternative, adopt the ALJ's Proposed Decision.

THE PARTIES

13. Petitioner Jason Wade Hughes is the founder of Hughes Marino, Inc., a commercial real estate brokerage firm based in San Diego. Petitioner is duly licensed by the DRE as a real estate professional. He received his license from the DRE as a salesperson in 1988 and as a broker in 1994. His business is primarily engaged in commercial real estate brokerage in San Diego. On or about March 28, 2024, the Commissioner issued the March 28, 2024 Order revoking Petitioner's real estate license, of which action Petitioner seeks review by this Court. *See* Ex. 1.[3]

14. Respondent Commissioner Chika Sunquist is Commissioner of the California Department of Real Estate who issued the March 28, 2024 Order revoking Petitioner's real estate license, of which action Petitioner seeks review by this Court.[4]

15. Respondent DRE is the California Department of Real Estate, an agency of the State of California authorized to safeguard and promote the public interest in real estate matters through licensure, regulation, education, and enforcement. The Commissioner of the DRE issued the March 28, 2024 Order revoking Petitioner's real estate license, of which action Petitioner seeks review by this Court.

[3] "Ex." refers to exhibits attached to the Declaration of William V. O'Connor, submitted concurrently herewith as an Appendix of Evidence in support of Petitioner's Verified Petition for Peremptory Writ of Administrative Mandamus.

[4] The Commissioner should have recused herself from these proceedings because she was serving as the Assistant Commissioner of Enforcement at the DRE at the time the Accusation was filed, making her a biased decision maker given the prior enforcement role and decisions related to Petitioner. *See* Gov. Code, § 11425.40 ("The presiding officer is subject to disqualification for bias, prejudice, or interest in the proceeding.").

JURISDICTION AND VENUE

16. This Court has jurisdiction to issue writs of mandamus pursuant to Code of Civil Procedure sections 1094.5.

17. This Court has jurisdiction over the Commissioner in her official role as Commissioner of the DRE, a California state agency with the responsibility for safeguarding and promoting the public interest in real estate matters through licensure, regulation, education, and enforcement.

18. This Court has jurisdiction over the DRE, a California state agency, with the responsibility for safeguarding and promoting the public interest in real estate matters through licensure, regulation, education, and enforcement.

19. Venue is proper in this Court under Code of Civil Procedure section 393(b) because Petitioner's business at which he performs licensed activities is based in this county, which is where Petitioner will be injured by Respondents' action. This county is also the place of the hearing presided over by the ALJ.

20. Petitioner has no plain, speedy, and adequate remedy at law.

21. Petitioner has exhausted all available remedies that would not result in irreparable injury or harm.

FACTUAL AND PROCEDURAL BACKGROUND

JASON HUGHES AND HUGHES MARINO

22. Petitioner is the founder of Hughes Marino, Inc., a commercial real estate brokerage firm based in San Diego. Hughes Marino has approximately 150 real estate professionals and employees across multiple offices nationwide. Although the company's focus has always been brokerage work, it also offers a suite of other services, including construction management, planning and design, lease administration, and culture consulting.

23. Prior to founding Hughes Marino, Petitioner was a founder and principal of the real estate firm Irving Hughes for eighteen (18) years. Petitioner was first licensed as a salesperson in 1988 and as a broker in 1994. Petitioner has not been subject to disciplinary action in his 35 years

as a California-licensed salesperson and broker. As the ALJ succinctly summarized, "[Petitioner's] deep devotion to his profession [is] evident . . ." Ex. 4 at 23.

THE UNDERLYING TRANSACTIONS

24. Because of Petitioner's extensive experience in the San Diego commercial real estate market, in 2012, then-San Diego Mayor Bob Filner asked Petitioner to advise him on real estate matters for the City of San Diego (the "City"), ultimately naming him a volunteer "Special Assistant" in April 2013. Ex. 5 at 42:12–16; Ex. 6 at B8; Ex. 4 at 13, 23. In this informal role, which he performed without compensation, Petitioner assisted and advised the City on various new leases, lease amendments, lease extensions, and overall leasing strategies. Ex. 5 42:21–43:11; Ex. 4 at 6. While Petitioner provided his advice when requested, he was never a City employee or City official, never had a contract with the City, and was never engaged as the City's formal real estate broker. Ex. 5 at 86:1–87:16; Ex. 4 at 26, 29.

25. Notably, when consulting as an informal advisor without any compensation, no agency is established. Despite Petitioner asking for written clarification of his role, City officials would not provide any.

26. The disclosure and conflict-of-interest rules concerning government advisors are complex.

27. Petitioner sought clarification from City officials as to his reporting and disclosure obligations on multiple occasions, but he did not receive guidance and was never required by the City to file a Statement of Economic Interest, otherwise known as a Form 700. Ex. 5 at 43:12–17, 44:1–11, 59:12–23, 87:14–16; Ex. 6 at B7–8; Ex. 4 at 6, 23.

28. Under California law, every elected official and public employee who makes or influences governmental decisions is required to submit a Form 700.

29. Because Petitioner did not have a contract with the City and because he was not required to complete a Form 700 or other disclosure documents, and because no one from the City advised him otherwise, Petitioner understandably believed that his role as an informal advisor did

not qualify him as a government official. Ex. 5 at 59:12–23, 71:1–5, 87:14–16; Ex. 4 at 6, 23, 29, 35, 39.

30. Importantly, the City requires contracts between the City and any advisor for that advisor to formally work on behalf of the City. Not only did Petitioner never have any contract with the City, the only agreement ever signed between a former bipartisan administration of the City and Petitioner was one in which the City approved of Petitioner seeking compensation.

31. Although Petitioner's role as "Special Assistant" ended once Mayor Filner left office, Petitioner continued to serve as an informal, unpaid advisor as needed during subsequent mayoral administrations, including under Interim Mayor Todd Gloria and Mayor Kevin Faulconer. Ex. 5 at 42:21–43:11, 44:1–11, 47:24–48:7; Ex. 4 at 7, 14.

32. As part of this advisory role, in late 2013, Petitioner agreed to provide advice to the City with respect to its expiring lease at 1200 Third Avenue, also known as "Civic Center Plaza" or "CCP." Ex. 5 at 45:12–24, 48:8–11; Ex. 6 at B7–8; Ex. 4 at 7.

33. The City did not have a concrete plan for the approximately 800 employees housed at CCP at the time or for the nearly 300,000 square feet of office space it would need if it could not secure a new deal with the owner of CCP. Ex. 5 at 48:8–49:5; Ex. 4 at 7, 16.

34. While major leases are typically renegotiated years in advance, the CCP lease was expiring in a matter of months when Petitioner was asked to help. *Id.*

35. The City initially planned to purchase the building outright, but it became apparent in 2014 the City would be unable to legally or timely issue the lease-revenue bonds necessary to finance the acquisition. Ex. 5 at 49:6–50:6; Ex. 4 at 7, 16, 24.

36. At the behest of then-Mayor Kevin Faulconer, Petitioner instead developed a creative new option for the City to acquire the building: a complex "lease-to-own" structure, whereby the City would pay a minimal amount upfront while avoiding the public bond market, lock in monthly payments substantially below the fair market rent for the space, and own the building free and clear after the 20-year lease term expired. Ex. 5 at 50:6–10, 51:24–53:22, 54:21–55:10, 55:20–56:22; Ex. 4 at 7, 24.

37. The lease-to-own structure would depend on an intermediary who would purchase the building from its current owners and then execute a simultaneous lease agreement with the City. Ex. 5 at 200:5–15.

38. Petitioner was tasked by the City with locating potential intermediaries, and he ultimately identified Cisterra Partners, a development firm that had recently completed a similar deal on behalf of Sempra Energy. Ex. 5 at 56:4–12, 58:21–59:7; Ex. 4 at 25.

39. Because the lease-to-own structure was substantially more complicated and time-intensive than his previous role advising the City on traditional leases, Exhibit 5 at 53:1–19, 203:10–204:3, Petitioner informed all of the City officials that he had regular contact with that these services would fall outside his previous scope of work and that he would seek compensation from other parties for his services on the lease-to-own transaction.

40. Specifically, between August and November 2014, Petitioner disclosed to six separate senior City officials—including the Mayor and his Chief of Staff, as well as the City's CFO, COO, Director of Real Estate Assets, and Asset Manager—that he would seek compensation for his work on the transaction. Ex. 5 at 53:23–54:7, 58:9–59:16, 62:2–16, 63:18–64:15, 66:5–67:8, 69:24–70:17; Ex. 6 at B9–10, B11–12, B14–16, B17; Ex. 4 at 10–11, 14–18, 24–25 (detailing the various disclosures).

41. These disclosures culminated in a letter signed on November 19, 2014, in which, at the express direction of the Mayor and Chief of Staff, Director of Real Estate Assets Cybele Thompson acknowledged that Petitioner was free to accept compensation from the other parties on lease-to-own transactions. Ex. 6 at B17; Ex. 4 at 25.

42. After receiving the City's signed acknowledgement and approval that he could seek compensation for these complex transactions, Petitioner continued to serve as an informal advisor, assisting both the City and its counterparty, Cisterra, to finalize the terms of the lease-to-own for CCP.

43. Individuals from the City and Cisterra negotiated directly with one another, while Petitioner assisted in moving the deal forward. Ex. 5 at 77:21–24; 78:11–19; Ex. 4 at 26. Petitioner never negotiated terms or acted as either party's broker.

44. On June 2, 2015, just after the transaction closed and consistent with Petitioner's disclosures, Cisterra paid Hughes Marino $5,023,872.30 for Petitioner's work on the CCP transaction. Ex. 5 at 77:14–18; Ex. 4 at 7.

45. Following the completion of the CCP deal, the City then turned its attention toward acquiring additional office space in downtown San Diego. Initially, the City focused on negotiating a traditional lease at 101 Ash Street, a nearby office building. Ex. 5 at 77:25–78:10; Ex. 4 at 7. After those negotiations fell through in November 2015, the building's owners decided instead to sell the building on the open market. Ex. 5 at 79:8–9; Ex. 4 at 7.

46. In early 2016, a subsidiary of Cisterra put the 101 Ash building under purchase contract. Ex. 5 at 79:10–13; Ex. 4 at 8.

47. The following month, Cisterra approached the City directly about the City either leasing or leasing-to-own 101 Ash as it had done at CCP. The City initially declined.

48. In June 2016, however, Cisterra approached the City again, offering to either assign its purchase agreement of 101 Ash to the City for nominal consideration or to pursue a lease-to-own transaction similar to the CCP deal. The City ultimately opted for the lease-to-own option. Ex. 5 at 78:25–80:7; Ex. 4 at 8.

49. Again, Petitioner did not serve as the City's broker and was not acting in a licensed capacity.

50. As with CCP, Cisterra again compensated Petitioner for his role in bringing the parties together to complete the 101 Ash lease-to-own transaction. Ex. 5 at 80:11–15.

51. Consistent with the disclosures Petitioner had previously made to multiple City officials, in January 2017, the City and Cisterra closed on the lease-to-own transaction and Petitioner received $4,410,000 in compensation from Cisterra for his role in the transaction. Ex. 5 at 80:11–15, 250:18–21; Ex. 4 at 8, 26.

52. Despite the City's initial plan to occupy 101 Ash in a nearly "as-is" condition, shortly after closing on 101 Ash, the City elected to begin a substantial remodel of the building that would increase the number of employees the City could assign to the building beyond what was initially planned. Ex. 5 at 82:2–9.

53. The City's remodel faced a number of issues, all of which were unrelated to the underlying economics of the 101 Ash acquisition and none of which involved Petitioner. Ex. 5 at 83:3–8.

54. Most notably, as part of the renovation, the City and its contractors negligently disturbed asbestos, causing it to be released into the building and rendering it uninhabitable to this day. Ex. 5 at 80:17–82:17; Ex. 4 at 8, 26.

CIVIL SETTLEMENT AND TECHNICAL MISDEMEANOR PLEA

55. In October 2020, the City, now with an entirely new Mayoral administration and City Council, filed suit against Cisterra and its lender.

56. In the initial proceedings, the City sought to either rescind or amend its lease agreement at 101 Ash as a result of its inability to occupy the building.

57. As discovery progressed in that matter, the City added a number of other defendants, including its own contractors that conducted the remodel, as well as Petitioner and Hughes Marino.

58. As relevant to Petitioner and Hughes Marino, the City creatively alleged, among other things, that the compensation Petitioner received in connection with the 101 Ash and CCP transactions constituted a prohibited financial interest under California Government Code section 1090. Ex. 5 at 87:25–88:4; Ex. 4 at 8, 27.

59. Section 1090 provides that "[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members."

60. The statute carries a number of potential remedies and penalties. Importantly for the City, a public entity that is party to an affected contract may void the contract and seek disgorgement from the financially-interested individual. *See* Gov. Code § 1092. This statute,

unknown to Petitioner at the time of the transaction, became the centerpiece of the City's legal strategy to try to unwind the politically mired 101 Ash deal. Petitioner became a pawn in a high-stakes chess game between the City, Cisterra, and the lender.

61. The law governing who qualifies as a government official under section 1090 has changed significantly in the intervening years since Cisterra paid Petitioner for his work on the CCP and 101 Ash transactions. Ex. 4 at 8, 35.

62. While the statute speaks only to municipal "officers" and "employees," the California Supreme Court clarified in 2017 that this provision also applies to certain "independent contractors" who have an impact on government spending. *See People v. Superior Ct. (Sahlolbei)*, 3 Cal. 5th 230 (2017).

63. In the civil litigation, the City alleged that Petitioner, by virtue of providing informal real estate advice, fell within this extension of section 1090, even though (1) the law was ambiguous as to whether Petitioner fell within the purview of section 1090 at the time the transactions closed in 2015 and 2017, and (2) he had disclosed his changed role and his compensation in writing to multiple City officials, and received approval for both.

64. Although Petitioner believed at the time that his disclosures were sufficient to comply with any legal or ethical obligations, he also appreciated the risk a court or jury may find otherwise, especially in light of the uninformed and unfair media attention directed at Petitioner.

65. In an effort to put this matter behind him and make the City of San Diego whole, Petitioner agreed to settle the civil case with the City of San Diego while simultaneously resolving all investigations for a plea to a single technical misdemeanor. Ex. 5 at 94:16–95:2; Ex. 6 at A123–134; Ex. 4 at 9, 27–28.

66. Specifically, on March 22, 2023, Petitioner reached a settlement agreement with the City of San Diego by which he would pay the $9,433,872.30 he earned from Cisterra in connection with both the CCP and 101 Ash lease-to-own transactions. Ex. 5 at 94:16-23; Ex. 6 at A123–134.

67. Petitioner made the full restitution payment on March 28, 2023, and the City dismissed its claims against Petitioner on March 30, 2023. Ex. 5 at 94:16–23; Ex. 4 at 9, 39.

68. On March 23, 2023, Petitioner agreed to plead guilty to one misdemeanor count of violating Government Code section 1090. Ex. 5 at 94:24–95:2, 105:19–21; Ex. 6 at A123–134.

69. He was placed on summary probation, meaning he has no reporting requirements or other affirmative obligations, and was ordered to (and did) pay a fine of $400. Ex. 6 at A123–134.

70. The misdemeanor was subject to mandatory expungement no later than one (1) year from the date of the plea under Penal Code section 1203.4. Ex. 4 at 4, 9–10, 27–28.

DRE INVESTIGATION AND OAH PROCEEDING

71. On June 7, 2023, the Department of Real Estate served an Accusation on Petitioner, alleging that his technical misdemeanor conviction for violation of Government Code section 1090 is "substantially related" to the "qualifications, functions or duties of a licensee" (Code Regs., tit. 10, § 2910), and is therefore cause to revoke Petitioner's broker license. Ex. 6 at A106-07.

72. Petitioner served a Notice of Defense on June 14, 2023, and an Objection to the Accusation on June 22, 2023. Ex. 6 at A105.

73. On July 27, 2023, the Presiding Administrative Law Judge held a Prehearing Conference and thereafter assigned this matter to the ALJ.

74. The DRE filed motions in limine to exclude (1) the testimony of Petitioner's designated expert and (2) certain of Petitioner's proposed exhibits. Ex. 7. On August 14, 2023, the ALJ denied those motions. Ex. 8.

75. The hearing in this matter took place on August 23, 2023 (the "Hearing").

PROPOSED DECISION

76. On October 18, 2023, Petitioner filed his written closing arguments in connection with the August 23, 2023 Hearing. Ex. 9.

77. The DRE filed its reply to the written closing arguments on November 2, 2023. Ex. 10.

78. On December 1, 2023, the ALJ, after receiving hundreds of pages of exhibits, hearing live testimony from both Petitioner and an expert witness, reviewing character witness

letters,[5] and generally assessing credibility, issued a Proposed Decision finding that the proper discipline was a public reproval, along with reimbursement of $4,000 in DRE costs, finding:

a. "[Petitioner] demonstrated appropriate remorse and rehabilitation and has enjoyed an otherwise lengthy, successful, discipline-free career. On this record, a public reproval is sufficient discipline to adequately protect the public." Ex. 4 at 2.

b. "[Petitioner]'s belief that he was not a City employee was genuine and considered to the extent it demonstrated he did not intentionally violate any laws. . . . [Petitioner] has enjoyed a long and distinguished career, was clearly respected by several City mayoral administrations, and has no history of discipline. It was evident his conviction shook him to his core as he emotionally demonstrated while testifying. There is little doubt [Petitioner's] conduct will ever be repeated." *Id.* at 39.

c. "**On this record, nothing further is required to ensure public safety other than a public reproval**." *Id.* at 40.

79. On January 3, 2024, the DRE notified Petitioner that the Proposed Decision would not be adopted as the decision of the Commissioner.[6] Ex. 4.

[5] Petitioner and the DRE stipulated to allowing the ALJ to receive the character witness letters as live testimony to streamline the Hearing, which the ALJ agreed to. Ex. 5 at 181:9-182:6, 283:16-23.

[6] The DRE failed to satisfy the statutory notice requirements with respect to the ALJ's Proposed Decision. Government Code section 11517(c)(1) provides that "[t]hirty days after the receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney." The ALJ's Proposed Decision here was finalized and transmitted to the DRE on December 1, 2023. Ex. 4 at 41. The DRE was therefore required to file a copy of that decision as a public record and serve a copy on Petitioner no later than January 1, 2024. However, the DRE did not serve Petitioner until (at the earliest) January 3, 2024.

Additionally, in the DRE's letter informing Petitioner of the Commissioner's rejection of the Proposed Decision, the DRE writes that the Commissioner had the "discretion" to adopt any proposed stipulation between Petitioner and the DRE in an attempt to resolve the matter. Ex. 4. But as the ALJ correctly held, "[l]icensing authorities do not enjoy unfettered discretion to determine on a case-by-case basis whether a given conviction is substantially related to the relevant professional qualifications." *Id*. at 32.

80. On January 30, 2024, the Commissioner ordered that Petitioner submit his written argument no later than 15 days from the filing of the order. Ex. 11.

81. On February 14, 2024, Petitioner submitted Written Argument requesting that the Commissioner decline to impose discipline or uphold the ALJ's Proposed Decision of a public reproval. *See* Ex. 12.

82. On February 21, 2024, the DRE submitted its Argument After Rejection. *See* Ex. 13.

REVOCATION AND MOTION FOR RECONSIDERATION

83. On March 28, 2024, the Commissioner issued the Order revoking Petitioner's real estate license. *See* Ex. 1. That Order was initially effective April 17, 2024. *Id.*

84. On April 9, 2024, Petitioner moved to stay the effective date of the Order until May 17, 2024 under Government Code section 11521(a) to permit Respondent time to file a petition for reconsideration. *See* Ex. 14.

85. On April 11, 2024, the Commissioner stayed the effective date of the Order until 12 o'clock noon on May 17, 2024. *See* Ex. 15.

86. On April 25, 2024, counsel for the DRE sent a letter to Petitioner stating that any petition for reconsideration would be due no later than ten (10) days prior to the effective date of May 17, 2024. *See* Ex. 16.

87. On May 1, 2024, the Superior Court of California expunged Respondent's misdemeanor conviction. *See* Ex. 17. The Clerk of the Superior Court certified and entered that order on May 3, 2024. *Id.* In the expungement Order, the Superior Court found as follows: "Petitioners previously entered plea of guilty or nolo contendere is hereby withdrawn and a plea of not guilty entered[.] . . . The accusation or information against the ***petitioner is dismissed and the petitioner is released from all penalties and disabilities resulting from the offense of which he or she had been convicted[.]***" *Id.* (emphasis added).

88. On May 6, 2024, Petitioner submitted a Petition for Reconsideration to the DRE requesting that the Commissioner reconsider the Order revoking his real estate license and instead

decline to impose discipline or uphold the ALJ's proposed decision of a public reproval. *See* Ex. 2.

89. In that Petition for Reconsideration, Petitioner requested that, pursuant to Government Code section 11521, if additional time is necessary to evaluate the petition, the commissioner stay the effective date "for no more than 10 days, solely for the purpose of considering the petition." *Id.*

90. On May 7, 2024, counsel for the DRE submitted a Reply requesting that the Commissioner deny the Petition for Reconsideration. *See* Ex. 3.

91. On May 9, 2024, the Commissioner denied the Petition for Reconsideration. Ex. 18.

92. If Petitioner's license is revoked on the effective date of May 17, 2024, irreparable injury will result to the applicant because of the damage such revocation will cause to his reputation and career.

93. Moreover, if Petitioner's license is revoked on the effective date of May 17, 2024, irreparable injury will result to the applicant because he will be unlicensed in his current profession and effectively unable to make his living as a real estate salesperson.

94. Allowing Petitioner to remain a licensed real estate salesperson poses no threat to the public because the misdemeanor that Petitioner pleaded guilty to was a strict liability statute and because he has never committed an offense or faced professional discipline before or since the events that led to the misdemeanor plea. *See* Ex. 4 at 40 ("On this record, nothing further is required to ensure public safety other than a public reproval.").

CAUSES OF ACTION

FIRST CAUSE OF ACTION: WRIT OF ADMINISTRATIVE MANDAMUS AGAINST RESPONDENTS, CCP § 1094.5

95. Petitioner incorporates by reference and realleges the paragraphs set forth above as though fully set forth herein.

96. In taking the actions complained of herein, Respondents acted in a capacity subject to judicial review pursuant to Code of Civil Procedure section 1094.5.

97. Petitioner has a substantial, direct, and beneficial interest in retaining his real estate license and his right to retain his real estate license is directly affected by the Order revoking that license.

98. The March 28, 2024 Order wherein the Commissioner found that Petitioner's now-expunged Section 1090 misdemeanor conviction was substantially related to the practice of real estate and that Petitioner did not satisfy the statutory rehabilitation factors was a prejudicial abuse of discretion within the meaning of Code of Civil Procedure section 1094.5(b) and is not supported by substantial evidence in the record for the following reasons.

99. The Commissioner failed to proceed in the manner required by law by failing to apply the correct test to determine whether the underlying conviction was substantially related to the practice of real estate.

a. Relying on an outdated interpretation of the disciplinary statute, the ALJ incorrectly found that Petitioner's misdemeanor conviction was "substantially related" to the practice of real estate. Code Regs., tit. 10, § 2910(c).

b. In the Order, Respondents likewise did not conduct the three-part analysis required under the current statute to find substantial relationship.

c. Respondents based their argument for "substantial relationship" on an outdated version of the relevant statute that would allow them to prove a substantial relationship simply by showing that Respondent's conviction falls into one of 11 pre-defined types of conduct. Respondents failed to present evidence sufficient to meet the requirements of Section 2910(c).[7]

[7] Again, Respondents have both the burden of proof and the burden of production on this question. *See Daniels v. Dep't of Motor Vehicles*, 33 Cal. 3d 532, 536 (1983). In a matter involving suspension or revocation of a professional license, an agency must prove its case "by clear and convincing proof to a reasonable certainty." *Ettinger v. Board of Med. Quality Assur.*, 135 Cal. App. 3d 853, 855-857 (1982). "Until the agency has met its burden of going forward with the evidence necessary to sustain a finding, the licensee has no duty to rebut the allegations or otherwise respond." *Daniels*, 33 Cal. 3d at 536 (citing *La Prade v. Dep't of Water & Power of City of Los Angeles*, 27 Cal. 2d 47, 51 (1945). "The

i. First, Respondents failed to present evidence that the "nature and gravity of the offense" proves a "substantial relationship" between Petitioner's misdemeanor Section 1090 conviction and the practice of real estate. *Id.*

ii. To the contrary, the evidence presented showed that Petitioner made every effort to secure permission from the City of San Diego to seek compensation in the relevant transactions; the City provided that permission; and the City was satisfied with the transactions. *See* Ex. 12 at 11-13.

iii. Second, the "number of years that have elapsed since the date of the offense" weighs against a finding of a "substantial relationship" between the Section 1090 conviction and the practice of real estate. *Id.*

iv. Here, it is undisputed that the events underlying the misdemeanor conviction took place between seven and eleven years ago, from 2013 to 2017.

v. Third, Respondents failed to prove that Petitioner's role in the CCP and 101 Ash transactions related to the "nature and duties of a real estate licensee." Code Regs., tit. 10, § 20190(c).

vi. There is nothing categorical about Government Code section 1090 – the statute that Petition pleaded guilty to violating – that bears a "substantial relationship" to the "nature and duties of a real estate licensee." *Id.*; *see also* Ex. 5 at 213:9-214:7 ("[Section 1090] is not a real estate statute."]

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mere fact that the licensee has the right to subpoena witnesses . . . does not relieve the [agency] of meeting its burden of producing competent evidence supporting" the discipline sought. *Id.*

Respondents failed to meet this burden at the Hearing. Petitioner moved to dismiss the Accusation, including at the close of Respondents' case in chief. The ALJ should have dismissed the Accusation at that time.

vii. Petitioner did not engage in licensed activity in the events leading up to his misdemeanor conviction.

100. The Order is not supported by the findings and directly conflicts with the ALJ's Proposed Decision.

a. The ALJ's Proposed Decision correctly concluded that Petitioner satisfies the statutory rehabilitation factors, ultimately finding that "[o]n this record, nothing further is required to ensure public safety other than a public reproval." *See* Ex. 4 at 40.

b. Disregarding the foregoing, Respondents' Order ratchets a proposal of public reproval and nothing more up to the maximum punishment of revocation.

c. In so doing, Respondents assert that the public requires protection from Petitioner's licensed activities. This is both unsupported by the evidence and untrue.

d. Petitioner has not violated the law or faced disciplinary action before or since the events that led to the misdemeanor plea at issue here.

e. And even in the events leading up to that misdemeanor, Petitioner made every effort to remain on the right side of his ethical and legal obligations.

f. The Order itself admits that "[Petitioner] did notify City officials of his intention, and credibly testified about his numerous conversations with City officials regarding his intent. He did not hide his intention nor act before advising City officials about it. . . . Prior to his conviction, [Petitioner] enjoyed a long and distinguished career, was clearly respected by several mayoral administrations, and had no history of discipline." Ex. 1 at 6-7.

g. Then, in a dramatic turn, the Order claims that revocation is necessary to protect the public from Petitioner, an individual that the Order just

acknowledged had only violated the law unintentionally, is highly respected in his field, and has no history of discipline. *Id.* at 7.

h. Cherry-picking testimony from the hearing, the Order focuses on Respondent's displays of distress and even frustration over the handling of the litigation and criminal investigation that led to these proceedings.

i. But frustration with the litigation and investigation does not negate—nor is it relevant to—whether Petitioner has changed his attitude regarding the commission of the now-expunged misdemeanor.

j. That Respondents did not like Petitioner's tone at certain points of the Hearing does nothing in the way of proving Petitioner poses any threat to the public.

k. Importantly, Petitioner has been serving the public as a real estate professional for 35 years, 11 of which took place ***after the initial events underlying these proceedings***.

l. In other words, the public has not been harmed by Petitioner in the decade-plus that has elapsed since the underlying CCP and 101 Ash transaction negotiations began.

m. To allow Petitioner to retain his license would simply maintain the decidedly danger-free status quo.

n. Although the Order concludes that Petitioner poses a threat to the public, the Order offers zero supporting evidence on this point.

o. Instead, the Order adopts the ALJ's factual findings and legal conclusions to the contrary. *See* Ex. 1 at 2.

p. Specifically, the Order adopts the following factual findings:

    i. "There is no history of discipline on any of [Petitioner's] licenses." Ex. 4 at 3.

ii. "Complainant did not establish that [Petitioner]'s conviction demonstrated a pattern of repeated and willful disregard of law." *Id.* at 35.

iii. "[Petitioner's] claim that City officials told him he could seek compensation was unrefuted." *Id.* at 39.

iv. "It was evident [Petitioner's] conviction shook him to his core as he emotionally demonstrated while testifying. There is little doubt [Petitioner's] conduct will ever be repeated." *Id*.

q. Even after adopting the above findings and without offering any evidence to the contrary, the Order still claims that to allow Petitioner to retain his license would put the public at risk.

r. But the findings do not support—and in fact weigh against—the imposition of such extreme discipline.

101. The Commissioner's findings are not supported by the evidence.

a. In the Order, the Commissioner applies the most extreme discipline—full license revocation—which differs drastically from the public reproval the ALJ found proper in the Proposed Order.

b. The Commissioner so ordered even after adopting ***all but one*** of the ALJ's Legal Conclusions: LEGAL CONCLUSION No. 16, pages 37 and 38. Ex. 1 at 2.

c. In the Proposed Decision, LEGAL CONCLUSION No. 16 reads as follows: "Cause having been found to discipline [Petitioner's] broker license, the question is what discipline is appropriate. California Code of Regulations, title 10, section 2912, sets forth the department's criteria for rehabilitation as required by Business and Professions Code section 482. Those criteria were considered." Ex. 4 at 37-38.

d. In the Order, the Commissioner adjusted LEGAL CONCLUSION No. 16 to read, in part: "Cause having been found to discipline [Petitioner's] broker's license, the question is what discipline is appropriate. California Code of Regulations, title 10, section 2912, set forth the Department's Criteria for Rehabilitation as required by Business and Professions Code section 482. Those criteria are considered below[.]" Ex. 1 at 3.

e. The Order then analyzes 11 of the 13 criteria set forth under section 2912 and concludes that Petitioner's rehabilitation is insufficient under Regulation 2912. *Id.* at 5-6.

f. The following evidence directly contradicts the Order's conclusion that Petitioner's rehabilitation is insufficient under Regulation 2912:

   i. The time that has elapsed since "the act of the licensee that is a cause of action in the Bureau's Accusation against the licensee," is between seven and eleven years. This length of time weighs in favor of rehabilitation under section 2912(a).

   ii. Petitioner was ordered to pay restitution of $9,433,872.30 to the City and has since paid. *Id.* This weighs in favor of rehabilitation under section 2912(b).

   iii. As noted above, since the Commissioner issued the Order, Petitioner's conviction was expunged[8] on May 1, 2024. Ex. 17. This weighs in favor of rehabilitation under section 2912(c)

   iv. Petitioner's summary probation was scheduled to end on March 23, 2024. Ex. 1 at 5. This weighs in favor of rehabilitation under section 2912(e).

[8] In the expungement Order, the Superior Court found as follows: "Petitioners previously entered plea of guilty or nolo contedere is hereby withdrawn and a plea of not guilty entered[.] . . . The accusation or information against the ***petitioner is dismissed and the petitioner is released from all penalties and disabilities resulting from the offense of which he or she had been convicted[.]***" Ex. 17 (emphasis added).

v. There is nothing in the record to indicate that Petitioner owes any outstanding fines or fees in connection with the criminal conviction. Ex. 1 at 5. This weighs in favor of rehabilitation under section 2912(g).

vi. Petitioner "testified that he stepped down as the CEO of his company and appointed a new designated officer." Ex. 1 at 5.

vii. The fact that Petitioner may have been confused at the Hearing regarding documents his legal team prepared is improper under section 2912(h). Code Regs., tit. 10, § 2912(h).

viii. The evidence does in fact show that Petitioner stepped down as the CEO of his company and appointed a new designated officer, which weighs in favor of rehabilitation under section 2912(h).

ix. Since the events underlying these proceedings, Petitioner's business relationships have changed in that he no longer does business with municipalities. *See* Ex. 4 at 29. This weighs in favor of rehabilitation under section 2912(i).

x. Contrary to the Respondents' arguments, it is irrelevant to the analysis of section 2912(i) that Petitioner offered letters in support of Petitioner "from family members and individuals associated with [Petitioner's] company, Hughes Marino, showing that [Petitioner]." Ex. 1 at 5.

xi. Petitioner testified that he has a stable family life. Ex. 1 at 5. This weighs in favor of rehabilitation under section 2912(j).

xii. Pursuant to section 2912(k), the Order found that "there is no evidence of recent completion or enrollment of formal or vocational training courses." *Id.* This is irrelevant to the rehabilitation analysis

here because Petitioner is already gainfully employed and well-educated in his field.

xiii. The record contains ample evidence of Petitioner's significant and conscientious community involvement. *See*, *e.g.*, Ex. 5 at 100: 18-102:1.

xiv. For instance, Petitioner's community involvement includes playing a key role in rescuing the New Children's Museum, serving on numerous philanthropic boards, including the San Diego Museum of Contemporary Art and the Child Abuse Prevention Foundation, serving on the Chargers Stadium Task Force (at Mayor Kevin Faulconer's request), providing all Hughes Marino employees three fully paid days off per year to volunteer at an organization of their choice, and raising money for the community (including donating thousands of dollars every year to multiple non-profits). This weighs in favor of rehabilitation under section 2912(l).

xv. Contrary to Respondents' arguments, section 2912(l) does not require "specific information," nor does it specify that the information about community involvement be "recent." Code Regs., tit. 10, § 2912(l) ("Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems."

xvi. The evidence, including the testimony from the Hearing, shows that Petitioner's experiences leading up to these proceedings have caused him to drastically change both his attitude and behavior.

xvii. The ALJ found as much in the Proposed Decision:

1. "[Petitioner] demonstrated appropriate remorse and rehabilitation and has enjoyed an otherwise lengthy,

successful, discipline-free career. On this record, a public reproval is sufficient discipline to adequately protect the public." Ex. 4 at 2.

2. "[Petitioner]'s belief that he was not a City employee was genuine and considered to the extent it demonstrated he did not intentionally violate any laws. . . . [Petitioner] has enjoyed a long and distinguished career, was clearly respected by several City mayoral administrations, and has no history of discipline. It was evident his conviction shook him to his core as he emotionally demonstrated while testifying. There is little doubt [Petitioner's] conduct will ever be repeated." *Id.* at 39.

3. "On this record, nothing further is required to ensure public safety other than a public reproval." *Id.* at 40.

xviii. The foregoing weighs in favor of rehabilitation under section 2912(m).

102. Additionally, because the expungement occurred after the Commissioner issued the Order, this is a new fact that the Commissioner was unable to consider in reaching the previous decision and the Commissioner failed to take this new factor into account in denying the Petition for Reconsideration. *See* Exs. 17, 18.

103. The Order constituted a prejudicial abuse of discretion on the part of Respondents for multiple reasons, including those set forth above.

104. Respondents failed to satisfy the statutory notice requirements with respect to the ALJ's Proposed Decision.

105. Government Code section 11517(c)(1) provides that "[t]hirty days after the receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney."

106. The ALJ's Proposed Decision here was finalized and transmitted to Respondents on December 1, 2023. Ex. 4 at 41.

107. The DRE was therefore required to file a copy of that decision as a public record and serve a copy on Petitioner no later than January 1, 2024.

108. However, the DRE did not serve Petitioner until (at the earliest) January 3, 2024. *See* Ex. 4 at 1.

109. Respondents' decision is not supported by substantial evidence.

110. Petitioner has performed all conditions precedent of the filing of this petition.

111. This Petition is timely pursuant to Code of Civil Procedure section 1094.6(b) as it was filed within 90 days of May 17, 2024, the date on which the Order becomes final.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays as follows:

1. That the Court grant injunctive relief staying the effective date of the Order until the Court's order on this Petition.
2. That the Court issue a Writ of Mandamus commanding Respondents to (1) set aside the March 28, 2024 Order imposing discipline against Petitioner, which decision becomes final on or about May 17, 2024, and (2) dismiss the Accusation or in the alternative, adopt the ALJ's Proposed Decision.
3. That the Court award Petitioner attorney's fees, costs, and other monetary relief as may be just and proper.
4. For such other and further relief as the Court deems just and proper.

Dated: May 13, 2024

William V. O'Connor

Attorneys for Petitioner, Jason Wade Hughes

VERIFICATION

I, Jason Wade Hughes, declare:

I am the Petitioner in the above-titled action. I have read the foregoing Verified Petition for Peremptory Writ of Administrative Mandamus and know the contents thereof to be true of my own knowledge, except as to those matters that are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 13th day of May, 2024, at San Diego, California.

JASON HUGHES

Jason Wade Hughes