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8 Attorneys for Complainant

9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

12 In the Matter of:) OAH CASE NO.: 2021010605
)
13 THE COMMISSIONER OF FINANCIAL) FIL ORG ID: 85537
14 PROTECTION AND INNOVATION,)
) SETTLEMENT AGREEMENT
15 Complainant,)
)
16 v.) Hearing Dates: July 13-14, 2021
) Time: 9:00 A.M.
17) Location: 320 West Fourth Street
18 PROPERTY DAMAGE APPRAISERS, INC.,) Suite 630
) Los Angeles, CA 90013
19)
20 Respondent.)
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1 This Settlement Agreement is entered by and between the Complainant, the Commissioner
2 of Financial Protection and Innovation (Commissioner), and the Respondent, Property Damage
3 Appraisers, Inc. (PDA), and is made with respect to the following:

4 **I.**

5 **Recitals**

6 A. The Commissioner is authorized to administer and enforce the provisions of the
7 California Franchise Investment Law (Corp. Code § 31000 *et seq.*)¹ (FIL) and the rules and
8 regulations promulgated thereunder which control the registration, offer and sale of franchises in
9 California.

10 B. The Commissioner brings this action pursuant to the provisions of the FIL, and the
11 rules and regulations promulgated thereunder, including sections 31406 and 31408.

12 C. Pursuant to sections 31111, 31112, and 31114 of the FIL, an application for
13 registration of an offer of a franchise shall be accompanied by a Uniform Franchise Disclosure
14 Document (FDD) that contains the material information set forth in the application for registration
15 and shall be filed with the Commissioner.

16 D. As stated in section 31001, it is the intent of the FIL to provide each prospective
17 franchisee with the information necessary to make an intelligent decision regarding the franchise
18 being offered.

19 E. PDA is a corporation organized on or around July 16, 1963, with the principal place
20 of business located at 100 Energy Way, Fort Worth, Texas 76147-1412. PDA is a franchising
21 company that offers its franchisees the right to own and operate a property damage appraisal service
22 for real property, mobile homes, automobiles, motorcycles, boats, recreational vehicles, and heavy
23 equipment.

24 F. Tom Dolfay is the President and Chief Executive Officer of PDA.

25 G. On September 23, 2020, the Commissioner personally served PDA with the
26 Amended Citation including: (1) Desist and Refrain Order; (2) Assessment of Administrative
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¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 Penalties; and (3) Claim for Ancillary Relief Pursuant to Corporations Code sections 31406 and
2 31408 (Amended Citation). The Amended Citation is incorporated herein by reference.

3 H. The Amended Citation alleged that PDA committed the violations described in
4 Paragraphs i through iii below (Citation Allegations):

- 5 i. willfully made an untrue statement of material fact in an application, notice, or
6 report filed with the Commissioner under the FIL, or willfully omitted to state
7 in any such application, notice, or report at least one material fact which is
8 required to be stated therein, in violation of section 31200,
- 9 ii. knowingly made an untrue statement to the Commissioner during the course
10 of its investigation or examination in violation of section 31204(b), and
- 11 iii. failed to immediately notify the Commissioner of material changes in the
12 application on file with the Commissioner in violation of section 31123.

13 L. Pursuant to section 31406, the Commissioner ordered PDA to pay an administrative
14 penalty of \$20,000 which was calculated based on \$2,500 for each of the 8 alleged violations under
15 the FIL.

16 M. Pursuant to section 31408, the Commissioner also ordered PDA and all persons
17 employed by PDA who assisted in preparing or selling franchise registrations to attend eight hours
18 of a remedial education course in franchise law training, offered by instructors from a list provided
19 by the Commissioner.

20 N. Pursuant to section 31408, subdivision (b), the Commissioner also ordered PDA to
21 pay attorney’s fees and investigative expenses to the Department of Financial Protection and
22 Innovation (Department) in the amount of \$15,000 or according to proof.

23 O. On March 15, 2021, PDA timely submitted a Notice of Defense to the Commissioner
24 requesting an administrative hearing on the Citation Allegations.

25 P. It is the intention of PDA and the Commissioner (collectively, the Parties) to resolve
26 the Citation Allegations without the necessity of a hearing.

27 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
28 contained herein, the Parties agree as follows:

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II.

Terms and Conditions

1. Purpose. This Settlement Agreement resolves the Citation Allegations before the Commissioner set forth in Paragraphs A through P above in a manner that avoids the expense of a hearing and other possible court proceedings, protects consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of the FIL.

2. Final Desist and Refrain Order. PDA hereby stipulates that, in accordance with Corporations Code section 31406, PDA shall desist and refrain from future violations of Corporations Code sections 31123, 31200, and 31204.

3. Neither Admits Nor Denies. PDA neither admits nor denies the Commissioner’s findings of facts and conclusions of law as to sections 31123 and 31204.

4. Admissions. PDA admits to the following violations under section 31200:

i. on or around April 5, 2017, PDA failed to disclose the matter of *Nygaard v.*

PDA in Item 3 of its FDD approved on May 16, 2017 (Application 8350);

ii. on or around April 16, 2015, PDA failed to disclose the matter of *Mott v. PDA*

in Item 3 of its FDD approved on April 16, 2015 (Application 3052);

iii. on or around April 14, 2016, PDA failed to disclose the matter of *Mott v. PDA*

in Item 3 of its FDD approved on June 2, 2016 (Application 5770); and

iv. on or around April 5, 2017, PDA failed to disclose the matter of *Mott v. PDA*

in Item 3 of its FDD approved on May 16, 2017 (Application 8350).

5. Penalties. Pursuant to Corporations Code section 31406, PDA shall pay an administrative penalty of \$20,000 within 60 days from the date of executing this Settlement Agreement (Date of Settlement Execution). This payment shall be made payable to the Commissioner in the form of a cashier’s check or Automated Clearing House deposit to the Department and transmitted to the following address: Accounting – Enforcement Division, Department of Financial Protection and Innovation, 2101 Arena Blvd., Sacramento, California 95834, contemporaneously with notice of transmittal to Vanessa Lu, Counsel, at Vanessa.Lu@dfpi.ca.gov.

1 6. Compliance Training. Pursuant to Corporations Code section 31408, PDA and all
2 persons employed by PDA who assist in selling or preparing franchise registrations are hereby
3 required to attend remedial education, which shall consist of eight hours of franchise law training
4 per person offered by an instructor approved by the Commissioner within 90 days from the Date of
5 Settlement Execution. PDA shall be responsible for the costs of its franchise law training and shall
6 not offer or sell franchises in California until the training is complete. Proof of training will be
7 submitted to the Commissioner.

8 7. Disclosure of Settlement Agreement and Final Desist and Refrain Order. PDA will
9 disclose this Settlement and its Final Desist and Refrain Order referenced in Paragraph 2 of this
10 Settlement Agreement in any pending or future application for franchise registration with the
11 Commissioner.

12 8. Intermediary Penalty for Non-Compliance of Terms. Should PDA fail to comply
13 with the terms of this Agreement, prior to taking any action in Paragraph 11, the Commissioner will
14 provide written notice of breach to PDA and allow PDA 10 business days to cure its defect. Failure
15 to cure the defect within 10 business days is an automatic \$10,000 penalty to the Commissioner as
16 well as the Commissioner intending to take action contemplated by Paragraph 11.

17 9. Waiver of Hearing Rights. PDA acknowledges that the Commissioner is ready,
18 willing, and able to proceed with the administrative enforcement action described in Paragraphs J-N
19 of this Settlement Agreement. PDA agrees that this Settlement Agreement shall have the effect of
20 withdrawing its request for an administrative hearing on the Citation Allegations currently set for
21 July 13-14, 2021, Office of Administrative Hearings (OAH), Los Angeles, Case No. 2021010605.
22 PDA acknowledges its right to an administrative hearing under the FIL and hereby waives its right
23 to a hearing, and to any reconsideration, appeal, or other right to review which may be afforded
24 pursuant to the FIL, the California Administrative Procedure Act (APA), the California Code of
25 Civil Procedure (CCP), or any other provision of law. By waiving such rights, PDA effectively
26 consents to this Settlement Agreement becoming final.

27 10. Full and Final Settlement. The Parties hereby acknowledge and agree that this
28 Settlement Agreement is intended to constitute a full, final, and complete resolution of the

1 Amended Citation and allegations described herein, and that no further proceedings or actions will
2 be brought by the Commissioner in connection with these matters under the FIL or any other
3 provision of law, excepting therefrom any proceeding to enforce compliance with the terms of this
4 Settlement Agreement.

5 11. Failure to Comply with Settlement Agreement. PDA agrees that if it fails to comply
6 with the terms of this Settlement Agreement, the Commissioner may, in addition to all other
7 available remedies it may invoke under the FIL, deny any application, issue a stop order, and/or
8 summarily suspend or revoke any license granted by the Commissioner to PDA until PDA is in
9 compliance.

10 12. Future Actions by Commissioner. This Settlement Agreement may be revoked, and
11 the Commissioner may pursue any and all remedies available under law against PDA if the
12 Commissioner discovers that PDA knowingly or willfully withheld or misrepresented information
13 used for and relied upon in this Settlement Agreement.

14 13. Assisting Other Agencies. Nothing in this Settlement Agreement limits the
15 Commissioner’s ability to assist any other government agency (city, county, state, or federal) with
16 any prosecution, administrative, civil, or criminal action or investigation brought by any such
17 agency against PDA or any other person based upon any of the activities alleged in this matter or
18 otherwise.

19 14. Headings. The headings to the paragraphs of this Settlement Agreement are inserted
20 for convenience only and will not be deemed a part hereof or affect the construction or
21 interpretation of the provisions hereof.

22 15. Binding. This Settlement Agreement is binding on all the Parties’ heirs, assigns,
23 and/or successors in interest.

24 16. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
25 Settlement Agreement it has relied solely on the statements set forth herein and the advice of its
26 own counsel. Each of the Parties further represents, warrants, and agrees that in executing this
27 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any
28 other party, or any other person or entity not expressly set forth herein, or upon the failure of any

1 party or any other person or entity to make any statement, representation, or disclosure of anything
2 whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in
3 any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the
4 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
5 Settlement Agreement.

6 17. No Presumption Against Drafting Party. Each of the Parties acknowledges that it
7 has had the opportunity to draft, review, and edit the language of this Settlement Agreement.
8 Accordingly, the Parties intend that no presumption for or against the drafting party will apply in
9 construing any part of this Settlement Agreement. The Parties waive the benefit of Civil Code
10 section 1654 as amended and corresponding provisions of any successor statute, which provide that
11 in cases of uncertainty, language of a contract should be interpreted most strongly against the party
12 that caused the uncertainty to exist.

13 18. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that
14 it has received independent advice from its attorney(s) and/or representatives with respect to the
15 advisability of executing this Settlement Agreement.

16 19. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
17 of this Settlement Agreement will be valid or binding unless it is in writing and signed by each of
18 the Parties. The waiver of any provision of this Settlement Agreement will not be deemed a waiver
19 of any other provision. No waiver by either of the Parties of any breach of, or of compliance with,
20 any condition or provision of this Settlement Agreement by the other party will be considered a
21 waiver of any other condition or provision or of the same condition or provision at another time.

22 20. Full Integration. This Settlement Agreement is the final written expression and the
23 complete and exclusive statement of all the agreements, conditions, promises, representations, and
24 covenants between the Parties with respect to the subject matter hereof, and supersedes all prior or
25 contemporaneous agreements, negotiations, representations, understandings, and discussions
26 between and among the Parties, their respective representatives, and any other person or entity, with
27 respect to the subject matter covered hereby. This Settlement Agreement resolves the matter of the
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1 Amended Citation, and the Parties agree that the penalties and remedies therein are no longer in
2 effect.

3 21. Governing Law. This Settlement Agreement will be governed by and construed in
4 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such
5 court, and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an
6 inconvenient forum to the maintenance of such action or proceeding in such court.

7 22. Counterparts. This Settlement Agreement may be executed in one or more separate
8 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
9 together constitute a single document.

10 23. Effect Upon Future Proceedings. If PDA is the subject of any future action by the
11 Commissioner to enforce this Settlement Agreement, then the subject matter hereof may be used to
12 enforce the Settlement Agreement. In consideration for PDA agreeing to the terms of this
13 Settlement Agreement, the Commissioner will timely review and consider any future or pending
14 application and agrees that this Settlement Agreement will not be the sole basis of any action to
15 deny such application.

16 24. Third Parties. This Settlement Agreement does not create or give rise to any private
17 rights or remedies against PDA, create any liability for PDA, or limit the defenses of PDA for any
18 person or entity not a party to this Settlement Agreement.

19 25. Voluntary Agreement. PDA enters into this Settlement Agreement voluntarily and
20 without coercion and acknowledges that no promises, threats, or assurances have been made by the
21 Commissioner or any officer, or agent thereof, about this Settlement Agreement. The Parties each
22 represent and acknowledge that he, she, or it is executing this Settlement Agreement completely
23 voluntarily and without any duress or undue influence of any kind from any source.

24 26. Notice. Any notice required under this Settlement Agreement shall be provided to
25 each of the Parties at the following addresses:

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1 To Respondent PDA : Property Damage Appraisers, Inc.
2 Benjamin B. Reed, Esq.
3 Plave Koch PLC
4 12005 Sunrise Valley Drive, Suite 200
5 Reston, Virginia 20191
6 breed@PlaveKoch.com

6 To the Commissioner: Vanessa Lu, Counsel
7 Taylor Steinbacher, Senior Counsel
8 Department of Financial Protection and Innovation
9 1455 Frazee Road, Suite 315
10 San Diego, California 92108
11 Vanessa.Lu@dfpi.ca.gov
12 Taylor.Steinbacher@dfpi.ca.gov

11 27. Signatures. A fax or electronic mail signature shall be deemed the same as an
12 original signature.

13 28. Public Record. PDA hereby acknowledges that this Settlement Agreement is and
14 will be a matter of public record.

15 29. Effective Date. This Settlement Agreement shall become final and effective when
16 signed by each of the Parties and delivered by the Commissioner’s agent via e-mail to PDA at
17 breed@PlaveKoch.com.

18 30. Authority to Sign. Each signatory hereto covenants that he/she possesses all
19 necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the
20 obligations set forth herein.

22 Dated: June 22, 2021

CHRISTOPHER S. SHULTZ
Acting Commissioner of Financial Protection and Innovation

25 By _____
26 MARY ANN SMITH
27 Deputy Commissioner
28 Enforcement Division

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Dated: June 22, 2021

PROPERTY DAMAGE APPRAISERS, INC.

By _____
TOM DOLFAY
Chief Executive Officer

Dated: June 22, 2021

Approved as to Form and Content:

By _____
Benjamin B. Reed, Esq.
Plave Koch PLC
Counsel for Property Damage Appraisers, Inc.

