File # 17-043

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c 42 as amended

AND

IN THE MATTER OF

LUIS EDUARDO AYALA GOMEZ
(AKA LUIS AYALA)
(147645)

AND

LUIS AYALA PERSONAL REAL ESTATE CORPORATION
(147645PC)

CONSENT ORDER

RESPONDENTS:	Luis Eduardo Ayala Gomez (AKA Luis Ayala), trading representative with Metro Edge Holdings Ltd. dba Metro Edge Realty, while licensed with West Coast Realty Ltd. dba Sutton Group West Coast Realty Luis Ayala Personal Real Estate Corporation
DATE OF CONSENT ORDER:	October 6, 2021

PROCEEDINGS:

On October 6, 2021, the Superintendent of Real Estate (the "Superintendent") of the BC Financial Services Authority ("BCFSA") resolved to accept the Consent Order Proposal (the "Proposal") submitted by Luis Eduardo Ayala Gomez Ayala ("L. Ayala"), on his own behalf and on behalf of Luis Ayala Personal Real Estate Corporation ("Ayala PREC).

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by L. Ayala, on his own behalf and on behalf of Ayala PREC.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and in particular having found that L. Ayala and Ayala PREC committed professional misconduct within the meaning of sections 35(1)(a), (c), (e) and (g) and committed conduct unbecoming within the meaning of sections 35(2)(a), (b) and (c) of the RESA, pursuant to section 43 of the RESA, the Superintendent orders that:

1. L. Ayala's and Ayala PREC's licenses are hereby cancelled.

2. L. Ayala and Ayala PREC be prohibited from applying for a license pursuant to RESA for a minimum of two (2) years from the date of this Order.

3. L. Ayala and Ayala PREC are further prohibited from applying for a license until L. Ayala has made the following payments:

    a. $4,738.13 to ET, the seller of the Pxxxxxx Dxxxx Property, as reimbursement for thecommission and GST paid to L. Ayala's brokerage on that transaction; and

    b. $12,277.13 to CM, the seller of the Nxxxx Hxxxxxxxx Property, as reimbursement forthe commission and GST paid to L. Ayala's brokerage on that transaction,

    and has provided proof of such payments to the BCFSA in a form satisfactory to BCFSA.

4. L. Ayala and Ayala PREC be jointly and severally liable to pay enforcement expenses to BCFSA in the amount of $1,500 within two (2) months from the date of this Order.

Dated this 6th day of October, 2021 at the City of Vancouver, British Columbia.

"Jonathan Vandall"
Jonathan Vandall
VP, Real Estate Market Conduct

Attch.

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LUIS EDUARDO AYALA GOMEZ
(AKA LUIS AYALA)
(147645)

AND

LUIS AYALA PERSONAL REAL ESTATE CORPORATION
(147645PC)

CONSENT ORDER PROPOSAL BY LUIS AYALA AND
LUIS AYALA PERSONAL REAL ESTATE CORPORATION

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by Luis Ayala ("L. Ayala") on his own behalf and on behalf of Luis Ayala Personal Real Estate Corporation ("Ayala PREC") to the Superintendent of Real Estate (the "Superintendent") of the BC Financial Services Authority ("BCFSA") pursuant to section 41 of the *Real Estate Services Act* ("RESA").

For the purposes of the Proposal, L. Ayala, on his own behalf and on behalf of Ayala PREC, and the Superintendent have agreed upon the following facts:

1. L. Ayala (147645) has been continuously licensed as a trading representative since 2006.

2. L. Ayala became licensed as Ayala PREC (147645PC) on July 30, 2013 and has been continuously licensed as such since that time.

3. L. Ayala was licensed as trading representative with West Coast Realty Ltd. dba Sutton Group West Coast Realty ("Sutton West Coast Realty") from February 17, 2011 to August 31, 2016. L. Ayala was subsequently licensed as a trading representative with Metro Edge Holdings Ltd. dba Metro Edge Realty ("Metro Edge Realty") commencing August 31, 2016.

4. This matter involves five real estate transactions that occurred between January 2016 and July 2017. L. Ayala was approached by Axxxx Xxxxx ("A. Xxxxx"), another real estate licensee, who asked that L. Ayala allow his name to be used as the buyer's agent on A. Xxxxx's listings even though A. Xxxxx was to provide all services to both the buyers and the sellers.

5. The purpose of this arrangement was to increase the amount of commission that would otherwise be payable on the sale of the properties by involving a buyer's brokerage in the real

estate transactions. L. Ayala was aware of this purpose and agreed to participate. In exchange for allowing A. Xxxxx to use his name as the buyer's agent, L. Ayala would receive a portion of the buyer's agent commission and L. Ayala would give A. Xxxxx most of the buyer's agent commission on each transaction.

6. In two of the five real estate transactions, A. Xxxxx and L. Ayala facilitated the use of a nominee purchaser to tie the property up and then immediately assign the contracts of purchase and sale to a third-party purchaser for a higher purchase price. It was represented to the original sellers, A. Xxxxx's clients, that L. Ayala was acting for the buyer. The purpose of this arrangement was to generate profit from the higher sale price of the assignment of the property to the exclusion of the original seller of the property. L. Ayala was aware of this purpose and agreed to participate, although he did not receive any of the profit earned on the assignment.

<u>The Pxxxxxx Dxxxx Property</u>

7. In early January 2016, A. Xxxxx contacted L. Ayala to ask if L. Ayala would act as agent for a buyer RB, who was an individual known to A. Xxxxx, for the purchase of a property located at XXXXX Pxxxxxx Dxxxx, Squamish BC (the "Pxxxxxx Dxxxx Property"). L. Ayala understood that A. Xxxxx's intention was to have RB write an offer to purchase the Pxxxxxx Dxxxx Property for less than market value and then assign the contract to a third-party purchaser for a profit.

8. On or about January 11, 2016, as a designated agent and on behalf of A. Xxxxx's related brokerage, A. Xxxxx entered into a Multiple Listing Agreement with ET with respect to the Pxxxxxx Dxxxx Property (ET held a power of attorney for MT, the owner of the Pxxxxxx Dxxxx Property). The listing agreement provided that the commission due to the listing brokeragewould be $6,000 + $995 admin fee + GST. The listing agreement provided that the listing brokerage would give $3,000 of the listing brokerage's commission to the buyer's agent's brokerage.

9. On January 9, 2016, ET entered into a "Fee Agreement Seller Pays" agreement with L. Ayala's brokerage, Sutton West Coast Realty, (the "Pxxxxxx Seller Pays Agreement") whereby ET agreed to pay to L. Ayala's brokerage a fee of 3.5% on the first $100,000 and 1.35% on the balance of the purchase price. L. Ayala signed the Pxxxxxx Seller Pays Agreement as the designated agent of RB with respect to RB's purchase of the Pxxxxxx Dxxxx Property. The Pxxxxxx Seller Pays Agreement increased the total amount of commission payable by ET above what was provided for in the listing agreement ET entered into with A. Xxxxx.

10. On January 12, 2016, ET entered into a Contract of Purchase and Sale to sell the Pxxxxx Dxxxx Property to RB "or nominee" for $350,000. On the Contract of Purchase and Sale, A. Xxxxx is identified as the seller's agent and L. Ayala is identified as the buyer's agent. Although listed as the buyer's agent, L. Ayala prepared the contract based on instructions from A. Xxxxx. The Contract of Purchase and Sale included the same terms with respect to the commission to Sutton West Coast Realty as the Pxxxxxx Seller Pays Agreement.

11. At A. Xxxxx's instruction, on January 21, 2016, L. Ayala sent A. Xxxxx an email which indicated that L. Ayala had made inquiries about the development potential of the Pxxxxxx Dxxxx Property on behalf of RB and discovered problems regarding its feasibility for development (the "January21, 2016 Email"). L. Ayala had not made such inquiries and the information in the January 21,

2016 Email was not true. The intention was that the January 21, 2016 Email would be used by A. Xxxxx to motivate ET to agree to a lower sale price for the Pxxxxx Dxxxx Property.

12. On February 11, 2016, ET and RB entered into a Contract of Purchase and Sale Addendum whereby they agreed to reduce the purchase price of the Pxxxxxx Dxxxx Property from $350,000 to $175,000. Prior to ET agreeing to amend the purchase price, A. Xxxxx, relying on the misrepresentations in the January 21, 2016 Email, advised ET that $175,000 was a fair price for the Pxxxxxx Dxxxx Property because of its supposed reduced feasibility for development. L. Ayala was aware that A. Xxxxx intended to and did use the January 21, 2016 Email for the purpose of advising ET to lower the purchase price of the Pxxxxxx Dxxxx Property.

13. On February 17, 2016, RB entered into an Assignment of Contract of Purchase and Sale for the Pxxxxxx Dxxxx Property to KD for $335,000 (the "Pxxxxxx Assignment"). The Pxxxxxx Assignmentdoes not state that the original purchase price was $175,000. The Pxxxxxx Assignment provided that RB agreed to pay a commission of 2% on the first $100,000 and 1.125% on the balance of the purchase price to L. Ayala's brokerage.

14. A. Xxxxx prepared the Pxxxxxx Assignment, using L. Ayala's name on the documents as the assignor's agent with L. Ayala's knowledge and consent. However, L. Ayala did not provide any agency representation to RB with respect to the Pxxxxxx Assignment.

15. ET was not aware that the contract had been assigned.

16. L. Ayala provided the Contract of Purchase and Sale and the Pxxxxxx Seller Pays Agreement to his brokerage. The brokerage was unaware that L. Ayala had not actually provided agency representation with respect to the Pxxxxxx Dxxxx Property. L. Ayala's brokerage paid commission in accordance with these documents as though the information contained in the documents was genuine.

17. The sale of the Pxxxxxx Dxxxx Property closed on March 15, 2016 and title was transferred to KD and KD's wife. In accordance with the Pxxxxxx Seller Pays Agreement, Sutton West Coast Realty received commission of $4,512.50, of which it paid $4,262.50 to L. Ayala. Commission of $3,995.00 was paid to the listing brokerage which in turn paid commission of $3,595.00 to A. Xxxxx. No additional commission was paid on the Pxxxxxx Assignment.

18. The total amount of commission paid by ET pursuant to the Pxxxxxx Seller Pays Agreement was $8,932.88 (including GST). This was $1,588.13 more commission than would have been payable under the listing agreement, which would have been $7,344.75.

19. A professional appraisal of the Pxxxxxx Dxxxx Property obtained by the then Real Estate Councilof BC (the "Council") in 2019 indicated that its fair market value on January 12, 2016 was approximately $350,000. A photograph taken by the appraiser on May 25, 2019 showed that ahouse has been built on the property.

20. L. Ayala did not receive any portion of the $160,000 profit earned on the assignment of the Pxxxxxx Dxxxx Property from RB to KD, and L. Ayala is not aware of who retained that money.

The Bxxxxxx Property

21. On February 4, 2016, as a designated agent and on behalf of A. Xxxxx's related brokerage, A. Xxxxxx entered into a Multiple Listing Agreement with SN and RN, the owners of a property located at XX Bxxxxxx Pxxxxxx, Squamish, BC (the "Bxxxxxx Property"). The listing agreement provided that the commission due to the listing brokerage would be $6000 + $995 (admin fee) + GST. The listing brokerage would give $3,000 of the listing brokerage's commission to the cooperating brokerage.

22. The listing agreement was amended on an unknown date to change the commission due to the listing brokerage to $3,995 + 3.255% on the 1st $100,000 and the commission due to the cooperating brokerage to 3.255% on the first $100,000 + 1.25% on the balance of the purchase price.

23. On February 7, 2016, RN and SN entered into a Contract of Purchase and Sale to sell the Bxxxxxx Property to PF and FR for $560,000. On the Contract of Purchase and Sale, A. Xxxxx is identified as the seller's agent and L. Ayala is identified as the buyer's agent. Although L. Ayala was listed as the buyer's agent, A. Xxxxx prepared the contract on behalf of PF and FR.

24. L. Ayala received the subject removal addendum and deposit from the buyers. PF and FR were under the impression that L. Ayala worked with A. Xxxxx as part of A. Xxxxx's real estate team.

25. L. Ayala did not provide any agency representation to the buyers in connection with their purchase of the Bxxxxxx Property. Rather, A. Xxxxx provided real estate services to the sellers, SN and RN, and the buyers, PF and FR, with respect to this transaction.

26. L. Ayala provided the Contract of Purchase and Sale and the amended listing agreement to his brokerage. The brokerage was unaware that L. Ayala had not actually provided agency representation with respect to the Bxxxxxx Property. L. Ayala's brokerage paid commission in accordance with these documents as though the information contained in the documents was genuine.

27. The sale of the Bxxxxxx Property closed on April 7, 2016. In accordance with the amendments to the listing agreement, Sutton West Coast Realty received commission of $9,005.00, of which it paid $8,755.00 to L. Ayala. Commission of $3,952.14 was paid to the listing brokerage, which in turn paid commission of $3552.14 to A. Xxxxxx.

28. The total amount of commission paid by RN and SN pursuant to the amended listing agreement was $13,650.00 (including GST). This was $6,260.25 more commission than would have been payable under the listing agreement, which would have been $7,344.75.

The Nxxxx Hxxxxxxxx Property

29. On April 13, 2016, as a designated agent and on behalf of A. Xxxxx's related brokerage, A. Xxxxx entered into a Multiple Listing Agreement with CM, the owner of a property located at XXXXX Nxxxx Hxxxxxxxx Wxx, Squamish, BC (the "Nxxxx Hxxxxxxxx Property"). The listing agreement provided that the commission due to the listing brokerage would be 1% of the final sale price +

$995 Admin fee + GST. The listing agreement provided that the listing brokerage would give the cooperating brokerage commission equivalent to 0.5% of the final sale price of the property.

30. The listing agreement was amended on an unknown date to change the commission due to the listing brokerage to 0.5% of the final sale price + 3.255% on the first $100,000 + 1.125% on the balance + $995 admin fee + GST. The commission to the cooperating brokerage was also amended to 3.255% on the first $100,000 + 1.125% on the balance of the purchase price.

31. On April 13, 2016, CM entered into a Contract of Purchase and Sale to sell the Nxxxx Hxxxxxxxx Property to PF and FR for $850,000. On the Contract of Purchase and Sale, A. Xxxxx is identified as the seller's agent and L. Ayala is identified as the buyer's agent. Although L. Ayala was listed as the buyer's agent, A. Xxxxx prepared the contract on behalf of PF and FR and L. Ayala only met with PF on one occasion to collect the deposit. L. Ayala did not provide agency representation to the buyers with respect to their purchase of the Nxxxx Hxxxxxxxx Property. Rather, A. Xxxxx provided real estate services to the seller, CM, and the buyers, PF and FR, with respect to this transaction.

32. PF and FR were under the impression that L. Ayala worked with A. Xxxxx and was part of A. Xxxxx's real estate team.

33. L. Ayala provided the Contract of Purchase and Sale and the amended listing agreement to his brokerage. The brokerage was unaware that L. Ayala had not actually provided agency representation with respect to the Nxxxx Hxxxxxxxx Property. L. Ayala's brokerage paid commission in accordance with these documents as though the information contained in the documents was genuine.

34. The sale of the Nxxxx Hxxxxxxxx Property closed on August 10, 2016. In accordance with the amendments to the listing agreement, Sutton West Coast Realty received commission of $11,692.50, of which it paid $11,442.50 to L. Ayala. Commission of $5,245.00 was paid to the listing brokerage, which in turn paid commission of $4,845.00 to A. Xxxxx.

35. The total amount of commission paid by CM pursuant to the amended listing agreement was $17,784.38 (including GST). This was $7,814.63 more commission than would have been payable under the listing agreement, which would have been $9,969.75.

36. Subsequent to the closing, L. Ayala gave A. Xxxxx $10,264.63 of the $11,442.50 commission that L. Ayala received on the sale of the Nxxxx Hxxxxxxxx Property in the form of a bank draft dated August 18, 2016.

37. On two other occasions L. Ayala gave A. Xxxxx bank drafts that represented a portion of the commissions L. Ayala had earned on the Pxxxxxx Property, Bxxxxxx Property, and Nxxxx Hxxxxxxxx Property as follows:

    a. $7,000 on April 1, 2016; and

    b. $2,112 on July 9, 2016.

The Hxxxxxx Property

38. On September 12, 2016, as a designated agent and on behalf of A. Xxxxx's related brokerage, A. Xxxxx entered into a Multiple Listing Agreement with SP and MK, the owners of a property located at XXXX Hxxxxxx Dxxxx, Coquitlam, BC (the "Hxxxxxx Property"). The listing agreement provided that the commission due to the listing brokerage would be 1% of the final sale price + $995 admin fee + GST. The listing agreement provided that the listing brokerage would give commission equivalent to 0.5% of the final sale price to the cooperating brokerage.

39. On September 18, 2016, SP and MK entered into a Contract of Purchase and Sale to sell the Hxxxxxx Property to YJ and BZ for $890,000. On the Contract of Purchase and Sale, A. Xxxxx is identified as the seller's agent and L. Ayala is identified as the buyer's agent. Although L. Ayala was listed as the buyer's agent, A. Xxxxx prepared the contract on behalf of YJ and BZ. L. Ayala met with the buyers to collect the deposit cheque and to obtain their signatures to remove subjects, but he did not provide any agency representation to them in connection with their purchase of the Hxxxxxx Property. Rather, A. Xxxxx provided real estate services to the sellers, SPand MK, and the buyers, YJ and BZ, with respect to this transaction.

40. On September 18, 2016, SP and MK entered into a "Fee Agreement Seller Pays" agreement with L. Ayala's brokerage, Metro Edge Realty, (the "Hxxxxxx Seller Pays Agreement") whereby SP and MK agreed to pay to L. Ayala's brokerage a fee of 3.225% on the first $100,000, plus 1.1625% on the balance of the purchase price. L. Ayala signed the Hxxxxxx Seller Pays Agreement as the designated agent of YJ and BZ with respect to their purchase of the Hxxxxxx Property. The Hxxxxxx Seller Pays Agreement increased the total amount of commission payable by SP and MK above what was provided for in the listing agreement they had entered into with A. Xxxxx.

41. SP and MK thought that YJ and BZ had their own realtor: L. Ayala.

42. YJ and BZ believed that A. Xxxxx was acting for them and that L. Ayala worked with A. Xxxxx.

43. L. Ayala provided the Contract of Purchase and Sale and the Hxxxxxx Seller Pays Agreement to his brokerage. The brokerage was unaware that L. Ayala had not actually provided agency representation to the buyers with respect to the Hxxxxxx Property. L. Ayala's brokerage paid commission in accordance with these documents as though the information contained in the documents was genuine.

44. The sale of the Hxxxxxx Property closed on December 12, 2016. In accordance with the Hxxxxxx Seller Pays Agreement, Metro Edge Realty received commission of $12,432.00, of which it paid $12,132.00 to L. Ayala. Commission of $5,455.00 was paid to the listing brokerage, which in turnpaid commission of $5,055.00 to A. Xxxxx.

45. The total amount of commission paid by SP and MK pursuant to the Hxxxxxx Seller Pays Agreement was $18,781.35 (including GST). This was $8,370.60 more commission than would have been payable under the listing agreement, which would have been $9,915.

46. Subsequent to the closing, L. Ayala gave A. Xxxxx $10,007.50 of the $12,132.00 commission that L. Ayala received on the sale of the Hxxxxxx Property in the form of a bank draft dated December 16, 2016.

The Dxxxx Rxxx Property

47. In early July 2017, A. Xxxxx telephoned L. Ayala and advised him of a new listing that A. Xxxxx was signing on a property located at XXXX Dxxxx Rxxx, Squamish, BC (the "Dxxxx Rxxx Property"). A. Xxxxx advised L. Ayala of the possibility of an assignment opportunity on this property similar to the assignment scheme on the Pxxxxxx Dxxxx Property. L. Ayala agreed to work with A. Xxxxx on this deal.

48. On July 25, 2017, as a designated agent and on behalf of A. Xxxxxx's related brokerage, A. Xxxxx entered into a Multiple Listing Agreement with MP, the owner of the Dxxxx Rxxx Property. The listing agreement provided that the commission due to the listing brokerage would be 1% of the final sale price + $995 admin fee + GST. The listing agreement provided that the listing brokerage would give commission equivalent to 0.5% of the final sale price to the cooperating brokerage.

49. On July 25, 2017, MP entered into a Contract of Purchase and Sale to sell the Dxxxx Rxxx Property to CD "or nominee" for $807,000. On the Contract of Purchase and Sale, A. Xxxxx is identified as the seller's agent and L. Ayala is identified as the buyer's agent. Although L. Ayala was listed as the buyer's agent, he prepared the offer on A. Xxxxx's instructions.

50. On July 25, 2017, MP entered into a "Fee Agreement Seller Pays" agreement with L. Ayala's brokerage, Metro Edge Realty, (the "Dxxxx Seller Pays Agreement") whereby MP agreed to pay commission of 3.25% on the first$100,000 and 1.1625% on the balance to L. Ayala's brokerage. L. Ayala signed the Dxxxx Seller Pays Agreement as the designated agent of CD with respect to CD's purchase of the Dxxxx Rxxx Property. The Dxxxx Seller Pays Agreement increased the total amount of commission payable by MP above what was provided for in the listing agreement MP had entered into with A. Xxxxx.

51. CD, an associate of A. Xxxxx and L. Ayala, never had any intention of completing the purchase of the Dxxxx Rxxx Property. After MP accepted CD's offer, but before the subjects were removed, A. Xxxxx provided L. Ayala with contact information for JW who was interested in taking an assignment of the contract to purchase the Dxxxx Rxxx Property for a higher price.

52. On August 10, 2017, L. Ayala drafted an Assignment of Contract of Purchase and Sale assigning the purchase of the Dxxxx Rxxx Property from CD to JW for $845,000. L. Ayala drafted the assignment on the instructions of A. Xxxxx.

53. On August 14, 2017, CD (and/or their "nominee") and MP entered into a purchase and sale addendum whereby MP agreed to reduce the sale price from $807,000 to $797,000. To L. Ayala's knowledge, A. Xxxxx had advised MP that CD had obtained a house inspection that had revealed that the house required new windows and that MP should therefore lower the price; however, no house inspection had actually taken place.

54. MP was not aware that the contract had been assigned.

55. L. Ayala provided the Contract of Purchase and Sale and the Dxxxx Seller Pays Agreement to his brokerage. The brokerage was unaware that L. Ayala had not actually provided agency representation with respect to the Dxxxx Rxxx Property. L. Ayala's brokerage paid commission

in accordance with these documents as though the information contained in the documents was genuine.

56. The sale of the Dxxxx Rxxx Property to JW closed on September 27, 2017. In accordance with the Dxxxx Seller Pays Agreement, Metro Edge Realty received commission of $11,352.62, of which it paid $11,052.62 to L. Ayala. Commission of $4,980.00 was paid to the listing brokerage, which in turn paid $4,580 to A. Xxxxx.

57. The total amount of commission paid by MP pursuant to the Dxxxx Seller Pays Agreement was $17,149.25 (including GST). This was $7,736.00 more commission than was payable under the listing agreement, which would have been $9,413.25.

58. Subsequent to the closing, L. Ayala gave A. Xxxxx's wife $2,007.50 of the $11,052.62 commission that L. Ayala had received on the sale of the Dxxxx Rxxx Property by way of bank draft, dated October 20, 2017.

59. L. Ayala did not receive any amount of the $38,000 earned on the assignment of the Dxxxx Rxxx Property from CD to JW and L. Ayala is not aware of who retained that money.

Misleading the Council

60. On December 13, 2017, L. Ayala was interviewed by a Council investigator and provided a signed statement to the Council in which he misled the Council about his involvement with A. Xxxxx in the purchase and sale of the Pxxxxxx Dxxxx Property, Bxxxxxx Property, Nxxxx Hxxxxxxxx Property, Hxxxxxx Property, and the Dxxxx Rxxx Property. L. Ayala essentially denied any misconduct and gave an exculpatory version of events that was untrue.

61. On February 21, 2018, L. Ayala was again interviewed by a Council investigator and provided a second signed statement to the Council. L. Ayala again gave an exculpatory version of events that was untrue.

62. On June 15, 2018, after consulting with legal counsel, L. Ayala provided a third signed statement to Council in which he admitted that he had not been entirely truthful in his earlier statements to the Council. L. Ayala admitted to much of the conduct set out in this consent order proposal and apologized to the Council for making false and misleading statements during the investigation.

63. L. Ayala further admitted that he had destroyed documents relating to the transactions to frustrate the Council's investigation, and that prior to his first interview with the Council, he met with A. Xxxxx and CD to ensure that their statements to the Council would be consistent.

64. On June 15, 2018, L. Ayala provided a signed letter of apology to the Council investigator wherein L. Ayala personally apologized for the manner that he dealt with the investigation.

Conclusion of the Council's investigation

65. Following his apology to the Council in June 2018, L. Ayala fully cooperated with the Council's investigation. L. Ayala provided his bank statements and attended for a further interview.

66. During the investigation of this matter, SN and RN submitted a claim to the Special Compensation Fund with respect to the excess commission paid for the sale of the Bxxxxxx Property as a result of the arrangement between L. Ayala and A. Xxxxx. The excess commission had been shared between L. Ayala and A. Xxxxx.

67. After receiving SN and RN's claim, L. Ayala refunded them $6,305.25, which exceeded the amount of the excess commission ($6,260.25) paid by SN and RN on the Bxxxxxx Property transaction. L. Ayala made this payment on his own without any contribution from A. Xxxxx.

68. During the investigation of this matter, SP and MK submitted a claim to the Special Compensation Fund with respect to the excess commission paid for the sale of the Hxxxxxx Property as a result of the arrangement between L. Ayala and A. Xxxxx. The excess commission had been shared between L. Ayala and A. Xxxxx.

69. After receiving SP and MK's claim, L. Ayala refunded them the entire amount of the excess commission ($8,370.60) paid by SP and MK on the Hxxxxxx Dxxxx transaction on his own withoutany contribution from A. Xxxxx.

70. During the investigation of this matter, L. Ayala contacted MP, the seller of the Dxxxx Rxxx Property, and refunded MP $11,052.62, which exceeded the amount of excess commission ($7,736.00) paid by MP on the Dxxxx Rxxx Property transaction. L. Ayala made this payment on his own without any contribution from A. Xxxxx.

71. On implementation of the Order on this Proposal, L. Ayala will have personally repaid to the sellers the full amount of the excess commission each seller paid on the transactions described herein.

72. A Notice of Discipline Hearing was issued on January 19, 2021 and served on L. Ayala on his own behalf and on behalf of Ayala PREC.

73. L. Ayala does not have any prior discipline history with the Council.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, L. Ayala and Ayala PREC propose the following findings of misconduct be made by the Superintendent:

1. L. Ayala and Ayala PREC committed professional misconduct within the meaning of section 35(1)(c) [Misconduct by licensee: wrongful taking or deceptive dealing] of the RESA with respect to the following trades in real estate in British Columbia:

    a. the Pxxxxxx Dxxxx Property on or about January 12, 2016;

b. the Bxxxxxx Property on or about February 8, 2016;

c. the Nxxxx Hxxxxxxxx Property on or about April 13, 2016;

d. the Hxxxxxx Property on or about September 12, 2016; and/or

e. the Dxxxx Rxxx Property on or about July 26, 2017,

(each, a "Transaction" and collectively the "Transactions"), as follows:

I. L. Ayala entered into an arrangement with A. Xxxxx, a licensee who was acting as the seller's agent in the Transactions, to circumvent the commission provisions of the listing agreement and to obtain remuneration to which he was not entitled;

II. L. Ayala knew that he was identified as the buyer's agent when in fact he did not provide agency representation to the buyer and/or acted upon the direction of A. Xxxxx thereby making an intentional misrepresentation of a material fact;

III. L. Ayala caused the seller to enter a written agreement with his brokerage or enter a written agreement with A. Xxxxx's brokerage, in order to pay a higher rate of commission than what was provided in their listing agreement, based on the false representation that L. Ayala was the buyer's agent;

IV. L. Ayala induced his brokerage to pay commissions in reliance on the false representation that L. Ayala was the buyer's agent; and

V. L. Ayala paid A. Xxxxx a portion of the remuneration received, when L. Ayala knew that such payment enabled A. Xxxxx to receive remuneration to which A. Xxxxx was not entitled.

2. L. Ayala and Ayala PREC committed professional misconduct within the meaning of section 35(1)(c) [Misconduct by licensee: wrongful taking or deceptive dealing] of the RESA with respect to the Pxxxxxx Dxxxx Property, as follows:

a. L. Ayala entered into an arrangement with A. Xxxxx, who was acting as the agent for the seller of the Pxxxxxx Dxxxx Property, and assisted A. Xxxxx or the named buyer, to induce the seller to enter into a contract of purchase and sale for the Pxxxxxx Dxxxx Property with the intention that the named buyer would assign the contract of purchase and sale and thereby deprive the seller of the opportunity to obtain fair market value for the Pxxxxxx Dxxxx Property;

b. L. Ayala prepared a contract of purchase and sale for the Pxxxxxx Dxxxx Property, purporting to act as agent for the buyer, when L. Ayala knew that the named buyer was not intending to complete the purchase;

c. in an email to A. Xxxxx dated January 21, 2016, L. Ayala made representations about the results of inquiries L. Ayala claimed to have made on behalf of the buyer regarding the feasibility of the Pxxxxxx Dxxxx Property for development, when:

I. he had made no such inquiries;

II. he relied on information provided to him by A. Xxxxx;

III. he knew the representations regarding the feasibility of the Pxxxxxx Dxxxx Property for development were untrue, or was reckless as to the truth of those representations;

IV. the representations were intended to induce the seller to lower the sale price and to deprive the seller of the fair market value of the Pxxxxxx Dxxxx Property; and

d. L. Ayala knew that he was identified as the assignor's agent in an assignment contract dated February 17, 2016 when in fact he did not provide agency representation to the assignor and acted upon the direction of A. Xxxxx, thereby making an intentional misrepresentation of a material fact.

3. L. Ayala and Ayala PREC committed professional misconduct within the meaning of section 35(1)(c) [Misconduct by licensee: wrongful taking or deceptive dealing] of the RESA with respect to the Dxxxx Rxxx Property, as follows:

a. L. Ayala entered into an arrangement with A. Xxxxx, who was acting as the agent for the seller of the Dxxxx Rxxx Property, and assisted A. Xxxxx or the named buyer, to induce the seller to enter into a contract of purchase and sale for the Dxxxx Rxxx Property with the intention that the named buyer would assign the contract of purchase and sale and thereby deprive the seller of the opportunity to obtain fair market value for the Dxxxx Rxxx Property;

b. L. Ayala prepared a contract of purchase and sale for the Dxxxx Rxxx Property, purporting to act as agent for the buyer, when L. Ayala knew that the named buyer was not intending and/or not able to complete the purchase; and

c. L. Ayala knew that he was identified as the assignor's agent in an assignment contract dated August 10, 2017 when in fact he did not provide agency representation to the assignor and acted upon the direction of A. Xxxxx thereby making an intentional misrepresentation of a material fact.

4. L. Ayala and Ayala PREC committed professional misconduct within the meaning of sections 35(1)(e) [Misconduct by licensee: fails or refuses to cooperate with an investigation] and 35(1)(g) [Misconduct by licensee: makes or allows to be made a false or misleading statement] of the RESA as follows:

a. L. Ayala had an understanding with A. Xxxxx and other persons that they would provide false or misleading statements to the Council during its investigation of the matters identified in paragraphs 1–3 above;

b. L. Ayala made false or misleading statements to the Council during its investigation of the matters identified in paragraphs 1–3 above; and

c. L. Ayala deleted or destroyed records related to one or more of the Transactions so that those records would not be available to Council in its investigation of the matters identified in paragraph 1–3 above.

5. Further, L. Ayala and Ayala PREC committed conduct unbecoming a licensee within the meaning of sections 35(2)(a) [Misconduct by licensee: conduct contrary to the best interests of the public], 35(2)(b) [Misconduct by licensee: undermines public confidence in the real estate industry] and 35(2)(c) [Misconduct by licensee: brings the real estate industry into disrepute] of the RESA, when they engaged in the conduct set out in one or more of paragraphs 1–4 above.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, L. Ayala and Ayala PREC propose that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the Superintendent, pursuant to section 43 of the RESA:

1. L. Ayala and Ayala PREC's licenses be cancelled.

2. L. Ayala and Ayala PREC be prohibited from applying for a license pursuant to RESA for a minimum of two (2) years from the date of this Order.

3. L. Ayala and Ayala PREC are further prohibited from applying for a license until L. Ayala has made the following payments:

    a. $4,738.13 to ET, the seller of the Pxxxxxx Dxxxx Property, as reimbursement forthe commission and GST paid to L. Ayala's brokerage on that transaction; and

    b. $12,277.13 to CM, the seller of the Nxxxx Hxxxxxxxx Property, as reimbursement for the commission and GST paid to L. Ayala's brokerage on that transaction,

    and has provided proof of such payments to the BCFSA in a form satisfactory to BCFSA.

4. L. Ayala and Ayala PREC be jointly and severally liable to pay enforcement expenses to BCFSA in the amount of $1,500 within two (2) months from the date of this Order.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. L. Ayala and Ayala PREC acknowledge and understand that the Superintendent may accept or reject the Proposal. If the Proposal is rejected by the Superintendent, the matter may be referred to a disciplinary hearing.

2. L. Ayala and Ayala PREC acknowledge that they have been urged and given the opportunity to seek and obtain independent legal advice with respect to the disciplinary process, the allegations contained in the Notice of Discipline Hearing, and the execution and submission of

the Proposal to the Superintendent; and, that they have obtained independent legal advice or have chosen not to do so, and that they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.

3. L. Ayala and Ayala PREC acknowledge and are aware that the BCFSA will publish the Proposal and the Consent Order or summaries thereof on the BCFSA's website, on CanLII, a website for legal research and in such other places and by such other means as the BCFSA in its sole discretion deems appropriate.

4. L. Ayala and Ayala PREC hereby waive their right to appeal pursuant to section 54 of the RESA.

5. If the Proposal is accepted and/or relied upon by the Superintendent, L. Ayala and Ayala PREC will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict L. Ayala or Ayala PREC from making full answer and defence to any civil or criminal proceeding(s).

6. Mr. Ayala and Ayala PREC acknowledge and are aware that, even after the passage of time identified in paragraph 2 of the Proposed Orders and even if the conditions identified in paragraph 3 of the Proposed Orders are satisfied, the Superintendent is not bound to accept any application for relicensing. L. Ayala and Ayala PREC remain subject to all requirements for a license in section 10 of the RESA (or any successor legislation), including in particular sections 10(a) and 10(d), and any Rules, regulations, bylaws or other instruments made pursuant to the RESA (or any successor legislation).

7. The Proposal and its contents are made by L. Ayala and Ayala PREC for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of L. Ayala and Ayala PREC in any civil proceeding with respect to the matter.

"LUIS AYALA"

Luis Ayala on his own behalf and on behalf of Luis Ayala PREC

Dated 23 **day of** Sept ember **, 2021**