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BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF	)	
ZACHARY ODELL DUSTIN	)	**STIPULATION AND ORDER**
TO OPERATE AS A	)	
HUNTING GUIDE	)	CASE NO. DOPL 2014- 270
IN THE STATE OF UTAH	)	

ZACHARY ODELL DUSTIN ("Respondent") and the **DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING** of the Department of Commerce of the State of Utah ("Division") stipulate and agree as follows:

1. Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action.

2. Respondent acknowledges that Respondent enters into this Stipulation knowingly and voluntarily.

3. Respondent understands that Respondent has the right to be represented by counsel in this matter and Respondent's signature below signifies that Respondent has either consulted with an attorney or Respondent waives Respondent's right to counsel in this matter.

4. Respondent understands that Respondent is entitled to a hearing before the State of Utah's Hunting Guide and Outfitter Licensing Board ("Board"), or other Division Presiding Officer, at which time Respondent may present evidence on Respondent's own behalf, call witnesses, and confront adverse witnesses. Respondent understands that by signing this document Respondent hereby waives the right to a hearing, the right to present evidence on Respondent's own behalf, the right to call witnesses, the right to confront adverse witnesses, and any other rights to which Respondent may be entitled in connection with said hearing. Respondent understands that by signing this document Respondent waives all rights to any administrative and judicial review as set forth in Utah Code Ann. §§ 63G-4-301 through 63G-4-405 and Utah Administrative Code R151-4-901 through R151-4-907. Respondent and the Division hereby express their intent that this matter be resolved expeditiously through stipulation as contemplated in Utah Code Ann. § 63G-4-102(4).

5. Respondent and the Division hereby express their intent that this matter be resolved expeditiously through stipulation as contemplated in Utah Code Ann. § 63G4-102(4).

6. Respondent understands that this Stipulation and Order, if adopted by the Director of the Division, will be classified as a public document. The Division may release this Stipulation and Order, and will release other information about this disciplinary action against Respondent's license, to other persons and entities.

7. Respondent admits the following facts are true:

a. Respondent was first licensed to practice as a hunting guide in the State of Utah on or about August 26, 2010.

b. On or about September 27, 2010 Respondent assisted a client in killing a trophy bull elk after the expiration of the client's elk hunting permit. The assistance was rendered on lands that are within the boundary of a National Forest and rendered while providing hunting guide services for compensation. Respondent's hunting guide services were

retained by and provided at the direction of George Jay Simon II. Mr. Simon directed Respondent to provide hunting guide services to David McCleve for the purpose of hunting trophy bull elk within the boundaries of a National Forest. Respondent provided those services to Mr. McCleve on the days directed by Mr. Simon. On one of those days, September 26, 2010, Respondent observed Mr. McCleve give a check to Mr. Simon as payment towards the services provided to Mr. McCleve for outfitting and hunting guide services. On that same day, a forest service ranger stopped by the camp and expressed an opinion that the elk permit ended that day, September 26, 2010. Mr. Simon and Mr. McCleve disagreed. After the conclusion of the conversation with the forest service ranger, Mr. Simon nor Respondent asked to see Mr. McCleve's elk permit.

8. Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and Utah Administrative Code R156-79-502(13) and R657-5-29 and that Respondent failed to use due diligence to determine the hunting dates for the Mr. McCleve's permit. Respondent agrees by engaging in such conduct the Division is justified in taking disciplinary action against Respondent's license pursuant to Utah Code Ann. § 58-1-401(2)(a). Respondent agrees that an Order, which constitutes disciplinary action against Respondent's license by the Division pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2), may be issued in this matter providing for the following action against Respondent's license:

(1) Respondent's license shall be subject to a term of probation for a period of two years. The period of probation shall commence on the date the Division Director signs the attached Order. During the period of probation Respondent's licenses shall be subject to all of the following terms and conditions. If the Board or Division later deems any of the conditions unnecessary such deletions may be made by an amended order issued unilaterally by the Division.

a. **Meet with the Board**: Respondent shall meet with the Board at the Board's next scheduled meeting following the signing of the accompanying Order. Respondent shall meet with a Division staff person prior to Respondent's first meeting with the Board to review this agreement. For the remainder of the duration of probation, Respondent shall meet with the Board or with the Division, as directed by the Division, annually or at such other greater or lesser frequency as the Division may direct.

b. **No violation of wildlife laws.** Respondent shall comply with all state and federal laws and rules regarding hunting guides and outfitters.

c. **Outfitter or Hunting Guide notification/evaluations:** Respondent shall notify any Outfitter or Hunting Guide, who retains his licensed services, of Respondent's restricted status and the terms of this agreement. Respondent shall further cause Respondent's Outfitter or Hunting Guide to submit a performance evaluation to the Board which is due on July, 15, 2014 and every 180 days thereafter while on probation. The receipt of an unfavorable evaluation may be considered to be a violation of probation. If Respondent was not retained as a hunting guide during the six months evaluation period, Respondent shall submit the report form on the date it is due and indicate on that form that Respondent is not currently retained as a hunting guide.

d. **Criminal History Report**. Respondent shall provide the Division and Board with a current criminal history report obtained from the State of Utah, Department of Public Safety, or from any other state directed by the Division, on an annual basis, or whenever so directed by the Division.

e. **Leaving the state of Utah:** If Respondent leaves the State of Utah for a period longer than sixty (60) days, Respondent shall notify the Division and Board in writing of the dates of Respondent's departure and return. The licensing authorities of the jurisdiction to which Respondent moves shall be notified by Respondent in writing of the provisions of this Stipulation and Order. Periods of residency or practice outside the State of Utah may apply to the reduction of the period this Stipulation and Order is in effect, if the new state of residency places equal or greater conditions upon the Respondent as those contained in this Stipulation and Order.

f. **Active license:** Respondent shall maintain an active license at all times during the period of this agreement.

g. **Change of Address:** Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.

h. **Report submission:** Respondent shall submit reports on the date they are due and shall appear at scheduled meetings with the Division and Board promptly. Failure to do so shall be considered a violation of this Stipulation and Order.

i. **Suspension if not working for one year**. If Respondent does not work in Respondent's licensed profession for a period of one year or longer, then Respondent's license shall be suspended. When Respondent begins working in Respondent's licensed profession and provides the Division with written notice of this fact, and Respondent is otherwise qualified to practice, the suspension shall be immediately lifted.

9. Upon approval by the Director of the Division, this Stipulation and Order shall be the final compromise and settlement of this non-criminal administrative matter, and hearings or prehearing conferences currently scheduled are hereby vacated. Respondent acknowledges that the Director is not required to accept the terms of this Stipulation and Order and that if the Director does not do so, this Stipulation and the representations contained therein shall be null and void, except that the Division and the Respondent waive any claim of bias or prejudgment they might otherwise have with regard to the Director by virtue of his having reviewed this Stipulation, and this waiver shall survive such nullification.

10. Respondent shall abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice. If the Division files a Petition alleging that Respondent has engaged in new misconduct or files an Order to Show Cause Petition alleging that Respondent has violated any of the terms and conditions contained in this Stipulation and Order, the period of Respondent's probation shall be tolled during the period that the Petition or Order to Show Cause Petition has been filed and is unresolved.

11. This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties regarding the subject of this Stipulation and Order. There are no verbal agreements that modify, interpret, construe or affect this Stipulation. Respondent agrees not to take any action or make any public statement, that creates, or tends to create, the

impression that any of the matters set forth in this Stipulation and Order are without factual basis. A public statement includes statements to one or more Board members during a meeting of the Board. Any such action or statement shall be considered a violation of this Stipulation and Order.

12. The accompanying Order becomes effective immediately upon the approval of this Stipulation and signing of the Order by the Division Director. Respondent shall comply with all the terms and conditions of this Stipulation immediately following the Division Director's signing of the Order page of this Stipulation and Order. Respondent shall comply with and timely complete all the terms and conditions of probation. If a time period for completion of a term or condition is not specifically set forth in the Stipulation and Order, Respondent agrees that the time period for completion of that term or condition shall be set by the Division or Board. Failure to comply with and timely complete a term or condition shall constitute a violation of the Stipulation and Order and may subject Respondent to revocation or other sanctions.

13. If Respondent violates any term or condition of this Stipulation and Order, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction.

14. Respondent understands that the disciplinary action taken by the Division in this Stipulation and Order may adversely affect any license that Respondent may possess in another state or any application for licensure Respondent may submit in another state.

15. Respondent has read each and every paragraph contained in this Stipulation and Order. Respondent understands each and every paragraph contained in this Stipulation and

Order. Respondent has no questions about any paragraph or provision contained in this Stipulation and Order.

DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

BY: _____
APRIL ELLIS
Bureau Manager

DATE: 6/5/14

RESPONDENT

BY: _____
ZACHARY ODELL DUSTIN

DATE: 6/4/14

SEAN D. REYES
UTAH ATTORNEY GENERAL

BY: _____
TONY R. PATTERSON
Counsel for the Division

DATE: 6/5/14

ORDER

THE ABOVE STIPULATION, in the matter of **ZACHARY ODELL DUSTIN,** is hereby approved by the Division of Occupational and Professional Licensing, and constitutes my Findings of Fact and Conclusions of Law in this matter. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2). The terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case.

DATED this 13th day of June, 2014.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING

MARK B. STEINAGEL
Director

Investigator Wayne Jeppson