

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF FINANCIAL SERVICES,
DIVISION OF INSURANCE AGENT AND
AGENCY SERVICES,

Petitioner,

v.

DOAH Case No.: 22-984PL

DFS Case No.: 266618-20-FC

SCOTT DAVID THOMAS,
Respondent.

DEPARTMENT'S PROPOSED WRITTEN REPORT
AND RECOMMENDED ORDER

COMES NOW the Petitioner, Department of Financial Services ("Department"), and hereby files the following Proposed Written Report and Recommended Order for consideration by the Administrative Law Judge, Robert Cohen.

APPEARANCES

For Petitioner: Marshawn Michael Griffin
 Department of Financial Services
 Office of the General Counsel
 200 East Gaines Street
 Tallahassee, Florida 32399-0333

 Greg Caracci
 Department of Financial Services
 Office of the General Counsel
 200 East Gaines Street
 Tallahassee, Florida 32399-0333

For Respondent: Matthew Ladd
 4649 Ponce De Leon Blvd., Suite 301
 Coral Gables, FL 33146

STATEMENT OF THE ISSUE

Whether the disputed facts alleged in the ten-count Amended Administrative Complaint ("Complaint") filed against Scott David Thomas ("Respondent") prove that Respondent violated the statutes charged in the Complaint, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

On March 2, 2022, the Department filed an eight-count Administrative Complaint against Respondent seeking to impose discipline against Respondent's public adjuster's license. On March 25, 2022, Respondent timely submitted a petition for hearing alleging that there were disputed issues of material fact and requesting a formal hearing pursuant to section 120.57(1), Florida Statutes. On March 30, 2022, the Department referred this matter to the Division of Administrative Hearings. This matter was initially set for final hearing on June 1, 2022. On April 27, 2022, the Department requested leave to amend the Administrative Complaint to add two additional counts. On May 9, 2022, this Court granted the Department's Motion for Leave to Amend. On May 13, 2022, Respondent timely submitted a response to the two additional counts. On May 24, 2022, the parties filed a Joint Motion to Continue. On May 24, 2022, this Court granted the Joint Motion to Continue and rescheduled this matter for an in-person hearing on August 25, 2022. On August 19, 2022, the parties submitted a Pre-Hearing Stipulation wherein the Department voluntarily dismissed Count II of the Complaint. The final hearing began on August 25, 2022, and continued to a second day. On October 21, 2022, both sides rested their cases in chief.

The Department called the following witnesses during the hearing: Joaquim Medeiros, Jim Reichle, Linda Berns, Mark Boknecht, Maria Quintana, Glenn Chapter, Ray Wenger, Liron Nicole Stav Roach, and Jason Bamburg. The Department offered twenty-eight (28) exhibits identified as Dept. Ex. 1, 3-14, 18, 20-27, and 29-36, which were admitted into evidence. References to the Department's exhibits will be referred to as [Dept. Ex. X p. X,]. References to the transcript will be referred to as [T. X Ln. X]. References to the Department's Motion for Discretionary Official Recognition filed on August 17, 2022, will be referred to as [Official Recognition – Court Order]. References to the Department's Motion for Discretionary Official Recognition filed on August 19,

2022, will be referred to as [Official Recognition – Sunbiz]. References to the Appendices of the Complaint will be referred to as [Appendix X]. References to facts that have been admitted will be referred to as [Admitted]. References to a specific point in any exhibit in video format will contain a time-stamp reference in the form of [XX:XX]. Exhibit 23a is divided into four subparts. References to a specific point in the exhibit will contain a notation of [Part X], followed by a time-stamp of [XX:XX].

Respondent testified on his own behalf and called Warren Diener, Esq., and Keith Lambdin, Esq., as witnesses. Respondent offered twelve (12) exhibits, which were admitted into evidence. References to Respondent's exhibits will be referred to as [Resp. Ex. X].

FINDINGS OF FACT

1. The Chief Financial Officer and the Department are vested with the authority to administer the Florida Insurance Code¹. The Department is the state agency with the authority to regulate and license public adjusters in the State of Florida pursuant to the Florida Insurance Code. The Department has jurisdiction over Respondent's license and appointments. [Admitted].

2. Respondent is licensed as a public adjuster, license number E138926. [Admitted].

3. At all relevant times, Respondent is the owner of, and is employed by, Indemnity Public Adjusters (“IPA”), a public adjusting firm. [Admitted; T. 205 Ln. 11-12].

4. At all relevant times, Asma Qureshi (“Qureshi”) was employed by IPA as a public adjuster.

5. Citizens Property Insurance Corporation (“Citizens”) maintains standard business hours Monday through Friday, 8 a. m. through 5 p. m. [T. 158 Ln. 14-15; T. 253 Ln. 18-19].

6. Citizens prefers to schedule home inspections during their standard business hours

¹ Chapters 624 through 632, 634, 635, 636, 641, 642, 648, and 651, Florida Statutes, constitute the “Florida Insurance Code.” See § 624.01, Fla. Stat.

because Citizens has found “that outside vendors, outside parties are most available” and that “it’s easier to communicate with management, staff, [and] vendors because it’s during business hours and things are open.” [T. 170 Ln. 16-21; T. 253 Ln. 22-24].

COUNT I

7. In Count I of the Complaint, the Department alleged Respondent violated the Florida Insurance Code by preventing Citizens from having access to necessary information to investigate and respond to a claim, denying reasonable access to a property that was the subject of an insurance claim, unreasonably delaying the claim, failing to exercise due diligence, and demonstrating a lack of fitness and trustworthiness.

8. On September 10, 2017, consumer V. L.’s home was damaged during Hurricane Irma. V. L. retained IPA to assist her in filing a claim with her insurer, Citizens. IPA filed a letter of representation with Citizens on May 9, 2019. [Admitted].

9. Liron Nicole Stav Roach (“Stav Roach”) was the assigned adjuster for Citizens and was supervised by Jason Bamburg (“Bamburg”). [T. 251 Ln. 13-14, 19-20].

10. Stav Roach and Bamburg conducted an initial inspection of V. L.’s property on June 1, 2019. V. L. was represented at the inspection by Qureshi. Qureshi was present at the inspection on behalf of IPA and filmed the inspection. When Stav Roach and Bamburg arrived at the property, the roof was covered with a tarp that needed to be removed for the inspection to be completed. Respondent failed to notify Citizens prior to the inspection that there was a tarp on the roof. [T. 255 Ln. 4-7; T. 270 Ln. 3-4, 17-19; T. 275 Ln. 20-22; Resp. Ex. 4d.; Resp. Ex. 2 p. 21 Ln. 15-19].

11. Had Respondent informed Citizens that there was a tarp on the roof, Citizens could have taken the necessary steps to proceed with the inspection, including obtaining a written

estimate from the vendor about the cost to remove the tarp. Bamburg discussed a request for a quote with Qureshi while the inspection was recorded and after the recording of the inspection was completed. [T. 280 Ln. 2-6; T. 302 Ln. 4-7, 10-17; T. 306 Ln. 12-15; Resp. Ex. 4d. 13:00].

12. Qureshi refused at the inspection on June 1, 2019, to provide an estimate or a quote to remove the tarp, directing Bamburg to speak to V. L.'s attorney. Stav Roach was later provided an exorbitant quote of \$7,500 to remove the tarp. Bamburg and Stav Roach attempted to negotiate a price for the tarp removal with a representative of the tarp removal company. The representative advised that any negotiation of the price needed to be discussed with his office, but he was unable speak with his office because it was a Saturday. Stav Roach was later able to negotiate a price of \$2,000 to remove the tarp, a price that was more in line with the industry standard for the services rendered. [Resp. Ex. 4d. 13:00; T. 270-71 Ln. 25-3; p. 292 Ln. 13, 18, 21-23; Resp. Ex. 2. p. 47 Ln. 10-12].

13. On June 21, 2019, Bamburg emailed Respondent, confirming an inspection on Saturday, June 29, 2019. [Dept. Ex. 3 006].

14. Respondent replied to Bamburg's email, demanding the following information: 1) the names of all parties that would attend the inspection; 2) the areas of the home that would be inspected along with an explanation of the "necessity of inspecting those areas as it relates to the reported claim for damages"; 3) copies of criminal background checks for all of Citizens' experts; 4) the experts' Department-issued license numbers; 5) the four experts' curricula vitae; 6) the experts' liability and errors and omissions insurance; 7) proof of the experts' workers' compensation insurance; and 8) the disclosure of "not only the name of the engineering firm but also any conflicts your expert might have with regards to any other open claim files, consulting or appraisal work with the insurance carrier." [Dept. Ex 4 007-008].

15. Respondent never indicated that the aforementioned demands were made by V. L. [T. 259 Ln. 3-4].

16. Respondent never provided written notice to Citizens that the June 29, 2019, inspection would not occur if he was not provided with the requested documentation. [T. 259 Ln. 17; T. 314-15 Ln. 24-1].

17. Citizens retained an engineer, Medhi Ashraf (“Ashraf”) to conduct the June 29, 2019, roof inspection. [Dept. Ex. 5; T. 276 Ln. 1-6].

18. On Saturday, just hours before the scheduled inspection, Respondent ambushed Citizens and informed them that he would not permit Ashraf or Ashraf’s roofing assistant to get on the roof to complete the inspection unless Respondent received the documentation that he demanded. [T. 314 Ln. 21-22; T. 317 Ln. 9-12].

19. On June 29, 2019, Stav Roach, Bamburg, Ashraf, and Ashraf’s roofing assistant arrived at V. L.’s property to conduct the inspection. They did not have the proof of liability insurance and workers’ compensation insurance. Respondent demanded that Bamburg contact his manager to find out if Citizens would assume liability for Ashraf and his roofing assistant. Bamburg attempted to contact his manager but was unable to reach them because it was Saturday. [Admitted; Dept. Ex. 5 6:00-8:05].

20. Citizens was prepared to conduct an inspection of the property on June 29, 2019, but Respondent refused to allow Citizens to complete its inspection of the roof. [T. 261 Ln. 9-11; T. 279 Ln. 7-9; T. 281 Ln. 19-23; Dept. Ex. 5].

21. On July 11, 2019, Stav Roach emailed Respondent, requesting to reschedule the inspection on July 20, 2019. Respondent replied on July 17, 2019, calling Bamburg “incompetent” and using language that was, according to Stav Roach, “disrespectful, condescending, passive-

aggressive, and borderline libel.” [Dept. Ex. 6 011-015; T. Ln. 263 Ln. 16-17].

22. On July 20, 2019, Respondent, Stav Roach, Bamberg, and Citizens’ contractors from Infinity EMS (“Infinity”) met at V. L.’s property to conduct an inspection of the roof. It was storming when the parties arrived at V. L.’s property. Bamberg and Respondent had a discussion regarding proceeding with the inspection based on Respondent’s demand to film the inspection. The inspection could not proceed because the contractors from Infinity advised that they would not climb onto the roof due to the weather. [T. 302 Ln. 25; T. 303 Ln. 11-13; T. 310 Ln. 17-20; Resp. Ex. 4b. 17:20-17:30].

23. Over the next four months, Stav Roach attempted to schedule another inspection of the property. Respondent never responded to any of Stav Roach’s requests. [T. 265 Ln. 15; T. 284 Ln. 25; T. 285 Ln. 2-6; Resp. Ex. 2 p. 94-95 Ln. 24-9].

24. Citizens denied V. L.’s claim on January 6, 2020, citing V. L.’s failure to allow Citizens to conduct a complete inspection of the property. [Admitted; T. 267 Ln. 19; Dept. Ex 7 016-017].

25. V. L. is a law enforcement officer. Respondent repeatedly asserted that because of V. L.’s profession, the only day of the week she was able to present for an inspection was Saturday. [Dept. Ex. 3 006; T. 267-68 Ln. 23-3].

26. During June and July of 2019, V. L. worked a Tuesday through Saturday schedule. V. L. was off on Sundays and Mondays. Mondays were the best day for her to be present during an inspection, but Respondent never notified V. L. about the possibility of scheduling the inspection on a Monday. [Resp. Ex. 12 p. 4-5 Ln. 25-3; 117-119].

27. Respondent was aggressive with Stav Roach and did not treat her with respect during their interactions. [T. 268 Ln. 12-14].

COUNT III

28. In Count III of the Complaint, the Department alleged Respondent violated the Florida Insurance Code by denying reasonable access to a property that was the subject of an insurance claim, unreasonably delaying the claim, failing to exercise due diligence, and demonstrating a lack of fitness and trustworthiness.

29. On February 4, 2019, consumer J. L. suffered a fire-related loss to her home. On February 6, 2019, J. L. executed a contract with IPA to represent her in a claim with her insurer, Citizens. [Admitted].

30. Citizens assigned a claims adjuster, Mark Boknecht (“Boknecht”), to J. L.’s claim. [T. 163 Ln. 23].

31. Boknecht contacted J. L.’s counsel about scheduling an inspection of J. L.’s property and was advised to schedule the inspection through Respondent. [T. 164 Ln. 9-14, T. 182 Ln. 18].

32. On May 10, 2019, Boknecht called Respondent to schedule an inspection of J. L.’s residence. Respondent advised Boknecht to send his request via email. [T. 164 Ln. 17-23]. On May 13, 2019, Boknecht emailed Respondent to schedule an inspection of J. L.’s property. [Dept. Ex. 8 p. 020; T. 165 Ln. 17-19].

33. Respondent did not reply to the May 13, 2019, email. [T. 166 Ln. 8].

34. On May 15, 2019, Boknecht called Respondent a second time to try to schedule an inspection. Boknecht requested to schedule the inspection on Monday through Friday at a time between 8:00 a. m. and 5:00 p. m. Respondent demanded that the inspection occur on a Saturday, claiming it was the only day of the week that J. L. was available for inspections. [T. 168 Ln. 1-4, 7-8; T. 181 Ln. 15].

35. On May 16, 2019, Boknecht sent Respondent another email to schedule an inspection of J. L.'s property on "Monday through Friday, from 8am to 5pm". [Dept. Ex. 9 p. 021-023].

36. On May 23, 2019, Boknecht called Respondent to attempt to schedule an inspection of J. L.'s property; however, he was unsuccessful. [T. 170 Ln. 2-5].

37. On June 5, 2019, Boknecht emailed Respondent to schedule an inspection of J. L.'s property. [Dept. Ex. 10 p. 024].

38. On Wednesday, June 19, 2019, J. L. was scheduled to provide a recorded statement to Citizens. [T. 171 Ln. 16]. On June 10, 2019, Boknecht emailed Respondent to attempt to schedule the inspection of J. L.'s property immediately after her recorded statement. [T. 171 Ln. 22; Dept. Ex. 11 p. 025]. Respondent still demanded to schedule the inspection of J. L.'s property on a Saturday. [T. 172 Ln. 17].

39. On June 10, 2019, Respondent emailed the assigned Citizens SIU investigator, Maria Quintana ("Quintana"), regarding the J. L. claim. [Dept. Ex. 12 p. 027-030; T. 155 Ln. 21-25].

40. Respondent's email to Quintana discussed matters unrelated to the J. L. claim, such as Quintana's prior employment. [T. 159 Ln. 8-9]. Furthermore, Respondent brought up insignificant matters, going as far as to try to instruct Quintana on what he believed her job responsibilities were. [T. 161-62 Ln. 8-13, 25-2]. Respondent continued to ask for a Saturday inspection date in the email he sent to Quintana. [Dept. Ex. 12 p. 029].

41. On June 14, 2019, Boknecht emailed Respondent, advising Respondent that Citizens would not agree to a Saturday inspection and again suggesting scheduling the inspection on the same day as J. L.'s recorded statement. [Dept. Ex. 13 p. 032].

42. J. L.'s recorded statement occurred on June 19, 2019. Boknecht was present for the recorded statement; Respondent was not. [T. 172 Ln. 20-23]. J. L. advised that she did not need to be present during the inspection of the property and that the inspection could occur during a weekday. [T. 173 Ln. 9-11]. J. L. further advised that she did not know that Respondent was only offering a Saturday inspection. [T. 173 Ln. 15-16].

43. On June 24, 2019, Boknecht emailed Respondent, attempting to schedule an inspection of J. L.'s property on Monday through Friday, 8 a. m. to 5 p. m. [Dept. Ex. 14 p. 034].

44. On July 9, 2019, Citizens inspected J. L.'s property. Citizens approved J. L.'s claim a week later. [Admitted; T. 176, Ln. 6-7].

45. It took approximately fifty (50) days for Citizens to schedule an inspection of J. L.'s property due to Respondent's refusal to cooperate with scheduling weekday inspection dates. [T. 175 Ln. 22].

46. Citizens would have been able to approve J. L.'s claim earlier but for Respondent's refusal to cooperate with Citizens regarding inspection dates. [T. 176 Ln. 20-22].

47. Respondent, according to Boknecht, was aggressive, condescending, and unprofessional in his correspondence. [T. 177 Ln. 1-2].

48. Respondent testified during the hearing that he never refused to schedule an inspection of J. L.'s property on a date other than Saturday. [T. 427 Ln. 2]. The Court should give no weight to this testimony. Respondent's claim is directly refuted by his email correspondence to Quintana as well as Boknecht's testimony. [Dept. Ex. 12]. Respondent also testified that J. L. had to take work off on a Tuesday to attend her inspection. [T. 428 Ln. 7-14]. This Court should also afford no weight to Respondent's assertion, as it is directly contradicted by Boknecht's testimony that J. L. was not present for the inspection.

COUNT IV

49. In Count IV of the Complaint, the Department alleged Respondent violated the Florida Insurance Code by preventing Citizens from having reasonable access to a property that was the subject of an insurance claim, unreasonably delaying the claim, and demonstrating a lack of fitness and trustworthiness.

50. Rimkus Consulting Group (“Rimkus”) was retained by Citizens to conduct an inspection on a property belonging to consumer G. T. Rimkus assigned Joaquim Medeiros (“Medeiros”), a licensed professional engineer with fifteen years of experience, to conduct the inspection. [T. 42-43 Ln. 25-8; T. 44 Ln. 14-19].

51. Because Medeiros is a senior engineer with Rimkus, Rimkus does not require him to have supervision when conducting inspections. [T. 60 Ln. 2-4].

52. Engineering is a specialized knowledge set which requires knowledge obtained through “academic training, experience and education.” [T. 44 Ln. 1-3].

53. Engineering requires special knowledge and education, such that “[n]o layperson can overrule a professional engineer” and that “no other person not an engineer in the state of Florida can supervise another engineer’s work.” [T. 61 Ln. 1-4].

54. Edward Ingram (“Ingram”) was the adjuster assigned by Citizens for G. T.’s claim.

55. Ingram was not an engineer.

56. Respondent was difficult and aggressive during Medeiros’ attempts to schedule an inspection of G. T.’s home. [T. 46 Ln. 10-12; T. 51 Ln. 22-24].

57. An inspection of the G. T. residence was finally scheduled for June 25, 2019. [T. 52 Ln. 12]. Medeiros arrived at the property wearing a Rimkus company shirt and hat and prepared to conduct his inspection. [T. 73 Ln. 1-3; T. 77 Ln. 13; Dept. Ex 18 1:58-3:10].

58. Respondent demanded Medeiros provide Respondent with proof of liability insurance and workers' compensation insurance. [Dept. Ex. 18]. Medeiros contacted staff at Rimkus and had Rimkus email the requested documentation to Respondent. [T. 59 Ln. 8-11; T. 64 Ln. 16-18; T. 65 Ln. 1-6; Dept. Ex. 18 3:00-3:13, 6:20-7:00; 8:00-9:17]. While Medeiros was attempting to contact Rimkus, Respondent aggressively approached him. [Dept. Ex. 18 7:34-7:52].

59. Despite receiving proof of Medeiros' liability insurance and worker's compensation insurance Respondent advised that he would not permit the inspection to occur because the claims adjuster from Citizen was not present at the scene to supervise Medeiros. [Dept. Ex. 18 14:22-14:30, 17:50, 18:08-18:26, 18:34; T. 65 Ln. 7-11; T. 438 Ln. 5-10].

60. Respondent unilaterally terminated Medeiros' June 25, 2019, inspection of G. T.'s property, despite Medeiros' willingness to perform the inspection. [Dept. Ex. 18 18:28-21:26; T. 61 Ln. 11; T. 69 Ln. 14-15]. Respondent was hostile and combative with Medeiros during the entirety of the attempted inspection on June 25, 2019. [Dept. Ex. 18]. Respondent's termination of the June 25, 2019, inspection unnecessarily delayed the resolution of G. T.'s claim. [T. 61 Ln. 14-15].

61. Respondent testified that he never prevented Citizens or Medeiros from conducting an inspection of the G. T. property and that "[t]he adjuster never showed up." [T. 435 Ln. 13; T. 473 Ln. 3]. The Court should afford this testimony no weight. Respondent's testimony is directly contradicted by Department Exhibit 18, in which Respondent clearly terminates the inspection. [Dept. Ex. 18].

COUNT V

62. In Count V of the Complaint, the Department alleged Respondent violated the Florida Insurance Code by preventing Tower Hill Insurance Group ("Tower Hill") from having

access to necessary information to investigate and respond to a claim, unreasonably delaying the claim, and demonstrating a lack of fitness and trustworthiness.

63. Consumer L. P.'s home reportedly suffered damage from Hurricane Irma. L. P. retained IPA to serve as his public adjuster in his claim with Tower Hill. L. P. was represented by attorney Randy Shochet ("Shochet"). Tower Hill retained the law firm of Bressler, Amery, and Ross, P. C. ("Bressler"). [Admitted; T. 122 Ln. 10-11]. Bressler assigned Linda Berns ("Berns") to L. P.'s claim. [T. 125 Ln. 8].

64. On January 18, 2019, Berns sent Respondent and Shochet an email explaining that Bressler was representing Tower Hill and requesting that an inspection be held during normal business hours. [Admitted; Dept. Ex. 22 p. 054-055]. Respondent replied to Berns' email and demanded that Berns provide "the name of your firm or affiliation, your title, your firm or affiliations address, your firm's affiliation or contact number, [and] a letter or communication from the carrier listing what your authority or role in this claim is." Respondent further stated that "[a]s a matter of professionalism, when sending an email to someone it would be helpful and proactive to provide numbers one through five." [Admitted; Dept. Ex. 22 p. 053].

65. Respondent could have easily obtained most of the requested information from the Florida Bar's website. [T. 126 Ln. 19-25]. However, Berns promptly replied to Respondent's email and provided all of Respondent's requested information, except for the letter or communication from Tower Hill stating Bressler's authority or role in the claim. [Dept. Ex. 22 p. 053].

66. On January 18, 2019, Respondent emailed Berns and thanked her for her quick reply and "most of the information I requested." Respondent did not give any dates for an inspection of consumer L.P.'s property in his email. Instead, Respondent unreasonably requested "a retainer from Tower Hill in this matter or would it be possible for the carrier to provide

something in writing that you are representing them and in what capacity? Once I am provided that, I would be happy discussing the matter with you.” [Admitted T. 122 Ln. 11, Dept. Ex 20 p. 048].

67. Berns’ supervisor, Hope Zelinger (“Zelinger”), emailed Respondent, stating that they would not be providing Respondent with a letter of representation. [Dept. Ex. 21 p. 052]. Zelinger then emailed Respondent stating that, as an officer of the Court, Bressler had been retained to represent Tower Hill. [Admitted; T. 122 Ln. 11; Dept. Ex. 20 p. 048].

68. Respondent replied to Zelinger’s email by calling Zelinger unreasonable and recommending that Zelinger and Berns “engage the FL bar for further clarification of this matter.” [Dept. Ex. 21 p. 051].

69. In the evening of January 18, 2019, Respondent sent Berns an email alleging that Tower Hill, Berns, and Bressler were engaging in “shenanigans” with regards to the L. P. claim. [*Id.*].

70. Respondent is not licensed as an attorney. [T. 362 Ln. 9].

71. Respondent maintained a challenging, aggressive, and confrontational tone in his emails with Berns and Zelinger. [T. 126 Ln. 8-13].

72. On June 10, 2019, Tower Hill took an Examination Under Oath (“EUO”) of Respondent. The EUO was recorded by a videographer. [Dept. Ex. 23].

73. Tower Hill needed Respondent’s EUO to gather information in order to make a determination on the L. P. claim. [T. 127-8 Ln. 22-1; T. 133 Ln. 15-16; T. 143 Ln. 7-10]. There were inconsistencies in the information provided by L. P., and L. P. claimed he “continuously deferred” to Respondent as to the facts and knowledge of the claim. [Dept. Ex. 24 p. 124; T. 142 Ln. 17-23; T. 143 Ln. 6-10].

74. Respondent was provided with a schedule of documents to bring to the EUO. [T. 127 Ln. 12-14]. The schedule included a request for all photographs that Respondent had taken of L. P.'s property. [T. 127 Ln. 17-19]. At the EUO, Respondent failed to provide all the photographs, either in digital or hard copy, that he had taken of L. P.'s property. Respondent also failed to provide an executed version of IPA's contract with L. P. [*Id.*; T. 129 Ln. 11-24; T. 138 Ln. 11-15; T. 153 Ln. 4-10; Dept. Ex. 23 Part 1 6:14-7:20; Dept. Ex. 23 Part 1 14:40-15:05; Dept. Ex. 23 Part 3 :15-1:06].

75. During the EUO, Berns repeatedly asked Respondent to provide any photographs he had. [T. 129 Ln. 11-18].

76. During the EUO, Respondent was provided with an exhibit for examination that was printed double sided. One side contained information germane to the EUO, and the other side had a copy of a driver's license. Respondent was provided with the exhibit but failed to return the exhibit to the court reporter. [Dept Ex. 23 Part 1 2:06].

77. During the EUO, Respondent advised that he had some of the photographs that he had taken on his phone. However, he also claimed that many of the photos he had taken were lost due to a hard drive failure. [Dept. Ex. 23 Part 2 19:40-19:57; Dept. Ex. 23 Part 3 :15-1:06].

78. The EUO was the first time that Respondent provided Tower Hill with any photographs he had taken of the L. P. claim. [T. 129 Ln. 15-18; Dept Ex. 23 Part 1 34:55-35:05; Part 2 :53-1:30].

79. According to Berns, Respondent was confrontational, aggressive, and obstructive during the EUO. He refused to answer specific questions about the claim, was evasive, repeatedly accused Berns of making mistakes during the EUO, and refused to wear a microphone provided by the videographer. [T. 129 Ln. 1-7; T. 131 Ln. 11-21; Dept. Ex. 23 Part 1 13:15-13:45; Dept.

Ex. 23 Part 3 17:37-18:05; Dept. Ex. 23 Part 3 21:15-21:46].

80. Respondent threatened to terminate the EUO when asked a question about his ownership of public adjusting companies. [Dept. Ex. 23 Part 1 24:30-24:45].

81. During a break, the assigned court reporter was so uncomfortable with Respondent's behavior during the EUO that a new court reporter had to be assigned for the remainder of the EUO. [T. 133 Ln. 8-11; Dept. Ex. 23 Part 4 :32-:41].

82. During the break, Berns discovered the exhibit referred to in paragraph 76 was missing. Respondent retained counsel during the break. [T. 145 Ln. 11; Dept. Ex. 23 Part 4]. When the EUO restarted, Respondent claimed Berns accused him of stealing the document. [T. 130 Ln. 14-20; Dept. Ex. 23 Part 4 2:07-2:12].

83. Berns advised that she did not accuse Respondent of stealing the document. However, Respondent cut her off mid-sentence. [Dept. Ex. 23 Part 4 2:07-2:12.]. Berns asked Respondent if he misplaced the document and reiterated that she did not accuse Respondent of stealing the document. [T. 131 Ln. 5; Dept. Ex. 23 Part 4 3:56-4:00, 5:45-5:47].

84. Respondent then unilaterally terminated the EUO. [Dept. Ex. 23 Part 4 6:11-6:46]. Respondent never advised that he was terminating the EUO under advice from counsel.

85. The EUO took approximately two hours and forty-one minutes. Despite that length of time, Berns and Tower Hill were unable to get to the heart of the matter regarding the claim due to Respondent's behavior and failure to provide his photographs. [T. 135 Ln. 22-24].

86. On or about August 8, 2019, Tower Hill denied L. P.'s claim. [Dept. Ex. 24 p. 123-126].

87. The totality of Respondent's behavior during L. P.'s claim process was a contributing factor in the denial of the claim, including Respondent's failure to provide necessary

documentation, his failure to assist in the investigation of the claim, and his termination of the EUO. [T. 128 Ln. 4-5, 8; T. 144 Ln. 19-22].

COUNT VI

88. In Count VI of the Complaint, the Department alleged Respondent violated the Florida Insurance Code by preventing Lloyds of London from having access to necessary information to investigate and respond to a claim, preventing reasonable access to a property that was the subject of an insurance claim, unreasonably delaying the claim, and demonstrating a lack of fitness and trustworthiness.

89. Jim Reichle (“Reichle”) was hired by an insurer to act as an appraiser for a claim involving the named insured, M. K. Respondent was retained as M. K.’s appraiser. [T. 80 Ln 2].

90. An inspection of M. K.’s property was scheduled for August 10, 2018. [T. 80 Ln. 8]. Reichle spoke with the property manager to obtain access to M. K.’s property for the inspection. [T. 80-81 Ln. 23-2]. Respondent was not present for the conversation with the property manager. [T. 81 Ln. 6].

91. The property manager volunteered information about M. K.’s property during his conversation with Reichle. [T. 89 Ln. 15-18]. Reichle did not interrogate or ask the property manager any questions about the claim, Respondent was not present for Reichle’s conversation with the property manager. [T. 81 Ln. 10-13; T. 477 Ln. 19].

92. On August 10, 2018, Reichle and Respondent met to conduct the inspection of M. K.’s property. [T. 81 Ln. 16]. Respondent advised that he would be filming the inspection with video and audio. [T. 81 Ln. 18-23].

93. During the inspection, Reichle and Respondent encountered each other on the second floor of the M. K. property. Reichle then advised Respondent of the information

volunteered by the property manager. [T. 82 Ln. 6, 11-16].

94. Respondent accused Reichle of interviewing the property manager and engaged in a tirade about how Reichle had violated Respondent's right to interview the property manager. [T. 82 Ln. 19-21; T. 82-83 Ln. 24-3].

95. At this point, Respondent aggressively stated to Reichle, "I was in the Marine Corps in Iraq, for 12 years and I love to fight." [T. 85 Ln. 2-5, 7-8]. Conveniently, Respondent started filming after threatening Reichle.

96. Respondent then terminated the inspection because Reichle had interviewed the property manager. Respondent demanded that Reichle vacate the property. [T. 84 Ln. 12-13; T. 86 Ln. 1; T. 95 Ln. 24; Dept. Ex. 25].

97. Although Reichle and Respondent were on the property for thirty minutes, Respondent only recorded two minutes of their interactions. [T. 91 Ln. 5-13; Dept. Ex 25].

98. While off camera, Respondent engaged in physically threatening conduct with Reichle. [T. 86 Ln. 17-18]. Based on Respondent's conduct, Reichle did not want to work with Respondent again and advised his client about having law enforcement or other armed personnel present for any future dealings with Respondent. [T. 94-95 Ln. 22-6].

99. Respondent's termination of the inspection caused unnecessary delay in the resolution of M. K.'s claim. [T. 93 Ln. 8; T. 97 Ln. 10, 14].

100. The M. K. claim was settled after Reichle and Respondent conducted their inspections. [T. 359 Ln. 13-18].

101. Respondent testified that he only terminated the appraisal inspection after Reichle walked away from him. The Court should afford this testimony no weight. Respondent's testimony of how the inspection was terminated is refuted by his own video recording of the event. [Dept.

Ex. 25].

COUNTS VII AND VIII

102. In Counts VII and VIII of the Complaint, the Department alleged that Respondent failed to include his permanent business address on a contract with consumers A. B. and J. A.

103. On March 12, 2019, IPA, by and through Respondent, executed a contract for adjusting services with A. B. [Dept. Ex. 26 p. 133-34].

104. On or about March 29, 2019, IPA, by and through Respondent executed a contract for adjusting services with J. A. [Dept. Ex. 27 p. 135-36].

105. A. B.'s contract lists IPA's and Respondent's address as P. O. Box 268064, Weston, Florida 33326 ("P. O. Box Address"). [Dept. Ex. 26 p. 133-34].

106. J. A.'s contract also lists IPA's and Respondent's address as the P. O. Box Address. [Dept. Ex. 27 p. 135-36].

107. Respondent never notified the Department that the P. O. Box Address was his business address. Respondent never notified the Department of State, Division of Corporations ("Division of Corporations"), that the P. O. Box Address was IPA's business address.

108. On January 28, 2011, Respondent notified the Department, on the Automated Licensing Information System ("ALIS"), that his home, business, and mailing address was 1025 Briar Ridge Road, Weston, Florida 33327. Since January 28, 2011, Respondent has not notified the Department about any changes in his addresses. [Dept. Ex. 36 p. 165].

109. According to IPA's annual reports filed with the Division of Corporations, IPA's mailing address and principal place of business on March 12, 2019, was 13575 58th Street North, Suite 339, Clearwater, Florida 33760. [Official Recognition – Sunbiz].

110. Respondent testified that, based on his communications with his attorney and the

Department's help desk, he believed using the P. O. Box Address as his permanent business address was not a violation. According to Respondent, neither his attorneys nor the help line advised there was a prohibition on using a P. O. Box as a business address. [T. 350 Ln. 2-5, 6-10]. Respondent failed to identify which attorneys he consulted with or who he spoke with on the Department help line. Accordingly, there is no corroboration for these hearsay statements, and the Court should afford them no weight.

COUNT IX

111. In Count IX of the Complaint, the Department alleged Respondent violated the Florida Insurance Code by preventing QBE Specialty Insurance ("QBE") from having access to necessary information to investigate and respond to a claim, unreasonably delaying the claim, and demonstrating a lack of fitness and trustworthiness.

112. Respondent was retained by the plaintiff as an expert witness in the case of *Douglas v. QBE Specialty Insurance*, in the Circuit Court in and for Broward County, Florida, case number CACE19013591. [Official Recognition – Court Order; Appendix C].

113. The scope of Respondent's testimony was to provide information "regarding the repairs necessary to return the property to its pre-loss condition." [*Id.*].

114. Respondent emailed defense counsel for QBE a series of insulting and unprofessional emails. [*Id.*]. In the emails, Respondent insulted the counsel's legal ability, threatened to file a complaint to the Florida Bar, and generally disrespected the attorney. [*Id.*]. Respondent copied all of the partners of defense counsel's law firm on the series of emails, as well as the senior leadership of QBE. [*Id.*].

115. Respondent was hostile toward the process server attempting to subpoena him for a deposition, as Respondent's behavior was "very confrontational." Furthermore, Respondent

followed the process server, attempting to video record him and his license plate. [*Id.*].

116. Because of Respondent's hostile behavior toward the process server, Professional Process Services, refused to engage in further attempts to serve process on Respondent. [*Id.*].

117. On September 23, 2021, a deposition had to be terminated due to Respondent's behavior. [Official Recognition – Court Order; Appendix A; Appendix C].

118. On December 1, 2021, the court issued an order compelling Respondent's appearance at a deposition. The Order advised that if Respondent failed to provide answers for the deposition questions, conducted himself in an unprofessional manner, or unilaterally terminated the deposition, he would be removed as an expert witness in the case. [Official Recognition – Court Order; Appendix C].

119. On January 3, 2022, a videotaped deposition of Respondent was scheduled for January 27, 2022. Respondent was on the service list for the deposition notice and, therefore, received notice of the deposition on January 3, 2022. [*Id.*].

120. Respondent was formally served with a subpoena for the videotaped deposition on January 25, 2022. [*Id.*]

121. At the videotaped deposition, Respondent refused to proceed with the deposition if recorded by a videographer, refused to be placed under oath if the deposition was videotaped, claimed he was improperly noticed for the deposition, and accused counsel for QBE of violating the Florida Rules of Civil Procedure. [Official Recognition – Court Order; Appendix B, C].

122. QBE filed a motion to strike Respondent as an expert witness.

123. At a hearing on QBE's motion, Respondent admitted to not being familiar with the Florida Rules of Civil Procedure, despite his prior representations. [Official Recognition – Court Order; Appendix C].

124. On March 16, 2022, the Court issued an Order on Defendant’s Motion to Strike Plaintiff’s Expert, Scott David Thomas (“Order”), striking Respondent as an expert witness in the case and specifically finding:

Mr. Thomas has: (1) been aggressive and hostile with process servers, court reporters, counsel for Defendant, and Broward Sheriff’s Officers; (2) improperly threatened to contact the Florida Bar regarding counsel for Defendant; (3) improperly refused to answer deposition questions; (4) improperly refused to be placed under oath during his second deposition without proper justification; (5) improperly contacted unrelated members of Keller Landsberg, PA and employees of Defendant; (6) sent insulting, disparaging and aggressive e-mails to counsel for Defendant; and (7) violated the December 1, 2021, Court Order by failing to conduct himself in a professional manner.

[*Id.*].

125. Respondent’s conduct while designated as an expert witness in *Douglas v. QBE* caused a six-month delay in the proceedings. [*Id.*].

126. Respondent testified that he did not cite to the Florida Rules of Civil Procedure during his deposition scheduled for January 27, 2022. [T. 500 Ln. 16]. This testimony is conclusively refuted by the record. [Appendix B]. Additionally, Respondent testified that he was not struck as an expert witness in *Douglas v. QBE*. This testimony is also contradicted by the record. [Official Recognition – Court Order; Appendix C].

COUNT X

127. In Count X of the Complaint, the Department alleged Respondent violated the Florida Insurance Code by preventing Citizens from having access to necessary information to investigate and respond to a claim, by preventing Citizens from having reasonable access to a property that was the subject to an insurance claim, unreasonably delaying the claim, and demonstrating a lack of fitness and trustworthiness.

128. Consumers L. M. - Husband and L. M. - Wife (collectively referred to as “L. M.”) filed a claim with Citizens for property damage that occurred during Hurricane Irma. L. M. retained Respondent as their appraiser in their claim with Citizens. Jared Holbrook (“Holbrook”) was assigned as Citizen’s appraiser. [Admitted; T. 99 Ln. 8-9].

129. On March 14, 2019, Respondent sent Holbrook an email confirming an inspection for March 22, 2019, at 1:00 p. m. and indicating his expectation that Holbrook be on time for the inspection. [Admitted; T. 99 Ln. 9; Dept. Ex. 30 p. 151].

130. On March 22, 2019, Holbrook arrived at L.M.’s property at 12:45 p. m. Respondent did not arrive at L.M.’s property by 1:00 p. m., the scheduled appointment time. As a result, Holbrook knocked on the door of the property. L. M. - Wife came to the window, and Holbrook introduced himself. Holbrook advised L.M. - Wife that he was at the property to meet Respondent for an appraisal inspection. Holbrook then went back to his truck and continued to wait for Respondent. At 1:10 p. m., Respondent had still not arrived at L.M.’s property. Thus, Holbrook knocked on the front door and asked L.M. - Wife if she had spoken to Respondent. Holbrook asked whether he could start the inspection on the outside of the property and roof, and L.M. - Wife agreed that Holbrook could start the inspection. [Admitted; T. 98 Ln. 20-24, T. 99 Ln. 9]².

131. Respondent arrived at the L. M. property at approximately 1:15 p. m. As soon as Respondent arrived, he berated Holbrook for starting the inspection without him. Holbrook was inspecting L. M.’s roof when Respondent arrived. Respondent ordered Holbrook to get off of L.M.’s roof. Holbrook informed Respondent that L.M. - Wife had given him permission to inspect the property. Respondent was hostile and verbally aggressive to Holbrook and told him that he did not have L.M. - Wife’s permission to begin the inspection. Holbrook suggested that he and

² Admitted by Respondent subject to a hearsay objection as to L.M. - Wife’s statements to Holbrook

Respondent complete the inspection of L.M.'s property. Respondent refused to allow the inspection to go forward and ordered Holbrook to leave the property. [Admitted³; T. 99 Ln. 10-11; T. 104 Ln. 11-13; T. 105 Ln. 4; Dept. Ex. 31].

132. Despite having alleged several times during the March 22, 2019, encounter with Holbrook that he did not have permission from the insured to begin the inspection, Respondent later admitted that Holbrook had permission from L. M. - Wife to begin the inspection. [Admitted; T. 99 Ln. 10-11].

133. A second inspection of the L. M. property was scheduled for May 15, 2019. [Admitted; T. 100 Ln. 24]. At the inspection, Respondent was accusatory and made efforts to prevent a free and open inspection of the property. [T. 105 Ln. 17-19]. The inspection was completed despite Respondent behaving as a nuisance. [T. 105 Ln. 22].

134. Following the inspection, Citizens and L. M. were unable to reach an agreement regarding the value of damages to L. M.'s property. Therefore, on July 8, 2019, in case number 2018-033816-CA, in the Circuit Court in and for Miami-Dade County, Florida, an order was entered appointing Saul Cimpler ("Cimpler") as the umpire in L. M.'s claim. [Admitted; p. 100-101 Ln. 25-1].

135. An umpire panel meeting was scheduled for September 18, 2019. During the meeting, Respondent was brash and acted unprofessionally. [T. 105-106 Ln. 23-5].

136. On September 25, 2019, Respondent emailed L. M.'s attorney, Hunter Patterson. Respondent copied multiple individuals on the email, including the corporate officers of Citizens, the Inspector General of Citizens, the Department, the Office of Insurance Regulation, and Lozano

³ Admitted except as to the following two issues: (1) the Administrative Complaint's assertion that Respondent "berated" Holbrook and that Respondent was "hostile and verbally aggressive" with Holbrook and (2) the assertion that "Respondent refused to allow the inspection to go forward and ordered Holbrook to leave the property." [T. 99 Ln. 24-25].

Insurance Adjusters (“Lozano”). [Dept. Ex. 32 p. 154-63].

137. In this email, Respondent states that he intends to have his personal attorney file a complaint with the United States Department of Justice based on injustices he perceived as occurring during the L. M. claim. Respondent also stated that he would be sending documentation to the Federal Bureau of Investigation. [*Id.*].

138. On September 25, 2019, Respondent sent an email to Cimbler. Respondent again copied the corporate officers of Citizens, the Inspector General of Citizens, the Department, the Office of Insurance Regulation, and Lozano. [Dept. Ex. 33 164-181].

139. Respondent made disparaging remarks in this email, claiming that Cimbler was unethical. [Dept. Ex. 33 p. 164-165].

140. Respondent was warned several times by Cimbler to refrain from including third parties in emails related to the appraisal of the L. M. claim. [Dept. Ex. 33 p. 166].

141. Respondent’s behavior of scheduling and then canceling inspections and generating irrelevant and unnecessary email correspondence unnecessarily delayed the resolution of the L. M. claim. [T. 108-109 Ln. 24-9].

142. Respondent testified during the hearing that he never berated Holbrook during the attempted appraisal inspection. [T. 386 Ln. 7]. Respondent further testified that L. M. - Wife was distraught that Holbrook was at her residence performing his inspection. [T. 383 Ln. 1-4]. The Court should afford this testimony no weight as it is directly contradicted by Respondent’s own video recording of his interactions with Holbrook. [Dept. Ex. 31].

CONCLUSIONS OF LAW

143. The Conclusions of Law are divided into five subparts: Subpart one will address Counts I, III, IV, and V; Subpart two will address Counts VII and VIII; Subpart three will discuss

the threshold legal issues related to Counts VI, IX, and X; Subpart four will address Counts VI, IX, and X; and Subpart five will address the Department's conclusion and penalty recommendation.

144. The Department has the burden to prove its allegations by clear and convincing evidence. *See Dep't of Banking and Fin., Div. of Sec. & Investor Prot. v. Osborne Stern and Co.*, 670 So. 2d 932 (Fla. 1996). "Clear and convincing evidence requires that the evidence must be found credible; the facts to which the witnesses testify must be precise and explicit[,] and the witnesses must be lacking in confusion as to the facts in issue." *Smith v. Dept. of Health & Rehab. Servs.*, 522 So. 2d 956, 958 (Fla. 1st DCA 1988), *citing Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

145. As to Counts I, III-VI, IX, and X, the Adjuster's Code of Ethics contained in Rule 69B-220.201(3)(f), *Florida Administrative Code*, requires that public adjusters act with dispatch and due diligence in achieving a proper disposition of a claim.

146. As to Counts I, III-VI, IX, and X, a violation of sections 626.611(1)(g), 626.854(14), (14)(b), or (14)(c), Florida Statutes, or Rule 69B-220.201(3)(f), *Florida Administrative Code*, establishes a violation of section 626.621(2), Florida Statutes.

SUBPART 1. DISCUSSION OF THE DEPARTMENT'S CHARGES AS TO COUNTS I, III, IV, AND V OF THE COMPLAINT

COUNT I

- a. Sections 626.854(14), (14)(b), and (14)(c), Florida Statutes, and Rule 69B-220.201(3)(f), *Florida Administrative Code*

147. The Department has proven by clear and convincing evidence that Respondent violated sections 626.854(14), (14)(b), and (14)(c), Florida Statutes, and Rule 69B-220.201(3)(f), *Florida Administrative Code*, as charged in Count I of the Complaint, by preventing Citizens from

having reasonable access to V. L.'s property when Respondent refused to permit Citizens to conduct an inspection of the property on June 29, 2019, and by refusing Citizens access to the property from July 2019 through November 2019.

148. Specifically, the testimony of Bamburg and Stav Roach established that Respondent failed to notify them prior to the June 29, 2019, inspection that he would refuse to permit Ashraf or his contractor to inspect the roof without providing proof of workers' compensation and liability insurance. Respondent, Bamburg, and Stav Roach communicated several times prior to the June 29, 2019, inspection, and yet Respondent waited until the last minute to state he would not permit an inspection without proof of insurance. Thus, Respondent failed to act with dispatch in resolution of the claim.

149. Additionally, by restricting Citizens' access to V. L.'s property to Saturdays only, Respondent prevented Citizens from having reasonable access to V. L.'s property. Respondent claimed that this was due to V. L.'s schedule. However, the record evidence establishes that V. L. was also available for Monday inspections. Respondent refused to inform V. L. of the potential of a Monday inspection, Respondent failed to adequately inquire about V. L.'s schedule, or Respondent knew about V. L.'s schedule and misrepresented that information to Citizens. All three options demonstrate Respondent's lack of dispatch and due diligence in resolving V. L.'s claim.

150. Respondent maintains that he did not obstruct reasonable access to V. L.'s property because the property was available for inspection on June 1, 2019, and July 20, 2019. This argument ignores the fact that (1) Respondent failed to notify Citizens about the tarp covering the roof prior to the June 1, 2019, inspection and (2) the July 20, 2019, inspection could not have occurred because Infinity refused to go on the roof due to the weather.

151. While Respondent maintains that his demand for proof of workers' compensation

and liability insurance was a reasonable precondition, there is no statutory authority that permits an adjuster to place conditions on an insurer's access to property that is the subject of an insurance claim.

152. Assuming, *arguendo*, that Respondent's precondition of proof of worker's compensation and liability insurance was reasonable, Respondent still denied Citizens reasonable access to the property for the four months following July 20, 2019, when he failed to respond to Stav Roach's multiple requests for additional inspection dates. The denial of V. L.'s claim is directly attributable to Respondent's failure to cooperate with Citizens' right to inspect the property. [T. 265 Ln. 15; T. 284 Ln. 25; T. 285 Ln. 2-6; Resp. Ex. 2 p. 94-95 Ln. 24-9].

b. Section 626.611(1)(g), Florida Statutes

153. The Department has proven by clear and convincing evidence that Respondent has violated section 626.611(1)(g), Florida Statutes, as charged in Count I of the Complaint, by demonstrating a lack of fitness and trustworthiness to engage in the business of insurance during the V. L. claim.

154. Chapter 626, Florida Statutes, does not define the term "fitness." When terms are not defined in a statute, the "plain and ordinary meaning of those terms applies." *Nat'l Fed'n of Ret. Persons v. Dep't of Ins.*, 553 So. 2d 1289, 1290 (Fla. 1st DCA 1989). In *Norkin vs. DFS*, 16-1996, 2016 WL 4584611, at ¶ 40 (Fla. DOAH Dec. 5, 2016; DFS January 18, 2017), the court found that the Webster's Dictionary definition of "fit" was applicable in the licensure context and meant "proper or acceptable," "morally or socially correct," and "suitable for a specified purpose."

155. Furthermore, the court has previously found a disregard for regulatory authority and a failure to conform with basic ethical principles are demonstrative of a licensee's lack of fitness and trustworthiness. *Dep't of Fin. Serv. v. Cephas*, 03-0798PL, 2003 WL 21510765, at ¶

45 (Fla. DOAH June 1, 2003; DFS July 25, 2003).

156. The Adjuster's Code of Ethics, as contained in Rule 69B-220.201, *Florida Administrative Code*, constitutes the basic ethical principles for all adjusters licensed under the Florida Insurance Code.

157. Accordingly, based on *Norkin* and *Cephas*, this Court should find that Respondent's conduct violated section 626.611(1)(g), Florida Statutes, because Respondent did not act morally or socially correct and because his conduct failed to conform with basic ethical principles.

158. The Department has proven Respondent's lack of fitness and trustworthiness in Count I because the record evidence establishes that Respondent failed to adhere to basic ethical principles and engaged in harassing, unprofessional, and disparaging treatment of Bamburg and Stav Roach. Furthermore, Respondent misrepresented V. L.'s schedule to Citizens, which demonstrates a lack of fitness and trustworthiness.

COUNT III

- a. Sections 626.854(14), (14)(b), and (14)(c), Florida Statutes, and Rule 69B-220.201(3)(f), *Florida Administrative Code*

159. The Department has proven by clear and convincing evidence that Respondent violated sections 626.854(14), (14)(b), and (14)(c), Florida Statutes, and Rule 69B-220.201(3)(f), *Florida Administrative Code*, as charged in Count III of the Complaint, by obstructing and preventing Citizens from having reasonable access to J. L.'s property.

160. Despite Citizens' multiple attempts (three telephone calls and six emails), Respondent refused to schedule an inspection of J. L.'s property for the fifty days between May 10, 2019, and July 9, 2019.

161. Respondent maintained that J. L. would have to present during the inspection and

that she was only available on Saturdays. However, Respondent's representations were contradicted by J. L.'s testimony in her recorded statement, wherein she testified that she did not need to be present for the inspection and had no knowledge of Respondent's demand that the inspection take place on a Saturday.

162. The evidence clearly establishes that an inspection of J. L.'s property could have taken place on any day, Monday through Friday, between May 10, 2019, and July 9, 2019. Respondent's actions were the sole reason that Citizens could not timely inspect J. L.'s property. Accordingly, Respondent failed to resolve the claim with proper dispatch. Respondent intentionally misrepresented J. L.'s availability for inspection to interfere with Citizens' reasonable access to J. L.'s property.

b. Section 626.611(1)(g), Florida Statutes⁴

163. The Department has proven by clear and convincing evidence that Respondent violated section 626.611(1)(g), Florida Statutes, as charged in Count III of the Complaint, by demonstrating a lack of fitness and trustworthiness to engage in the business of insurance during the J. L. claim.

164. Respondent's failure to adhere to basic ethical principles by violating the Adjuster's Code of Ethics, Respondent's misrepresentations to Citizens about J. L.'s availability, Respondent's conduct toward Citizens' employees during the J. L. claim, including using aggressive, condescending, and unprofessional correspondence with Boknecht, and his unnecessary and harassing email correspondence with Quintana all demonstrate Respondent's lack of fitness and trustworthiness.

COUNT IV

a. Sections 626.854(14), (14)(b), and (14)(c), Florida Statutes, and Rule 69B-220.201(3)(f),

⁴ The Department incorporates the arguments from paragraphs 154-156, *supra* as if fully argued herein.

Florida Administrative Code

165. The Department has proven by clear and convincing evidence that Respondent has violated sections 626.854(14), (14)(b), and (14)(c), Florida Statutes, and Rule 69B-220.201(3)(f), *Florida Administrative Code*, as charged in Count IV of the Complaint, by obstructing and preventing Citizens from having reasonable access to G. T.'s property.

166. Respondent's termination of Medeiros' attempted inspection of G. T.'s property was unreasonable and violated sections 626.854(14), (14)(b), and (14)(c), Florida Statutes, and Rule 69B- 220.201(3)(f), *Florida Administrative Code*.

167. Medeiros is a licensed professional engineer with over 15 years of experience. Engineering is a specialized field of study, requiring specialized knowledge. Medeiros further testified that because of the specialized knowledge required to be an engineer, a lay person could not adequately "supervise" an engineer.

168. Respondent testified that he never provided Ingram with written notice that the inspection would not proceed on June 25, 2019, if Ingram was not present. [T. 470 Ln. 4; T. 471 Ln. 3].

169. The evidence clearly establishes that Medeiros arrived at G. T.'s property prepared to conduct his inspection. Medeiros provided Respondent with his requested worker's compensation and liability insurance, but Respondent refused to allow Medeiros to complete his inspection. [T. 438 Ln. 5-10].

170. Respondent's demand that Ingram, a non-engineer, supervise Medeiros, an engineer, was unreasonable and prevented Citizens from having necessary access to the property.

171. The evidence clearly establishes that Medeiros' inspection of G. T.'s property on June 25, 2019, could have occurred but for Respondent's unreasonable unilateral termination of

the inspection. Respondent's termination of Medeiros' inspection unnecessarily delayed the resolution of G. T.'s claim and thus demonstrates Respondent's failure to act with proper dispatch during the claim.

b. Section 626.611(1)(g), Florida Statutes⁵

172. The Department has proven by clear and convincing evidence that Respondent has violated section 626.611(1)(g), Florida Statutes, as charged in Count IV of the Complaint, by demonstrating a lack of fitness and trustworthiness to engage in the business of insurance during the G. T. claim.

173. Respondent's failure to adhere to basic ethical principles by violating the Adjuster's Code of Ethics and Respondent's behavior during his interactions with Mr. Medeiros, including being aggressive and difficult during attempts to schedule the inspection and harassing Medeiros by engaging in hostile and aggressive behavior during the June 25, 2019, attempted inspection, all demonstrated a lack of fitness and trustworthiness.

COUNT V

a. Sections 626.854(14), (14)(b), and (14)(c), Florida Statutes, and Rule 69B-220.201(3)(f),
Florida Administrative Code

174. The Department has proven by clear and convincing evidence that Respondent violated sections 626.854(14), (14)(b), and (14)(c), Florida Statutes, and Rule 69B-220.201(3)(f), *Florida Administrative Code*, as charged in Count V of the Complaint, by preventing and obstructing Tower Hill from having reasonable access to necessary information to investigate and respond to the L. P. claim.

175. Tower Hill requested that Respondent provide an EUO and all photographs of the L. P. property to the EUO. Respondent failed to provide Tower Hill with all of the photographs he

⁵ The Department incorporates the arguments from paragraphs 154-156, *supra* as if fully argued herein.

had taken of L. P.'s property prior to and during the EUO. Respondent also failed to provide a copy of his executed contract with L. P.

176. Berns' testimony, as corroborated by the video of the EUO [Dept. Ex. 23a], shows Respondent behaving combatively, refusing to answer basic questions about the claim, and improperly and unilaterally terminating the EUO.

177. Respondent clearly failed to act with dispatch by delaying Tower Hill's investigation of L. P.'s claim through improper termination of the EUO. Respondent's failure to provide Tower Hill with his photographs of the L. P. residence, both prior to and during the EUO, demonstrated a lack of due diligence in handling L. P.'s claim.

b. Section 626.611(1)(g), Florida Statutes⁶

178. The Department has proven by clear and convincing evidence that Respondent has violated section 626.611(1)(g), Florida Statutes, as charged in Count V of the Complaint, by demonstrating a lack of fitness and trustworthiness to engage in the business of insurance during his involvement in the L. P. claim.

179. Respondent demonstrated his lack of fitness and trustworthiness during the L. P. claim by using disparaging language in emails he sent to Berns and Zelinger, by arriving at the EUO unprepared, by behaving combatively with Berns during the EUO, by refusing to cooperate with the videographer, by refusing to return the provided exhibit during the EUO, and by behaving in such a poor manner that a new court reporter was needed to complete the EUO.

SUBPART 2. DISCUSSION OF THE DEPARTMENT'S CHARGES AS TO COUNTS VII
AND VIII OF THE COMPLAINT

180. The Department has proven by clear and convincing evidence that Respondent violated section 626.8796(2), Florida Statutes, as charged in Counts VII and VIII of the Complaint,

⁶ The Department incorporates the arguments from paragraphs 154-156, *supra* as if fully argued herein.

by listing the P. O. Box Address as his business address in the A. B. and J. A. contracts.

181. Respondent's home, business, and mailing address as represented to the Department on March 12, 2019, and March 22, 2019, was 1025 Briar Ridge Road, Weston, Florida 33327.

182. IPA's principal place of business and mailing address as represented the Division of Corporations on March 12, 2019, and March 22, 2019, was 13575 58th Street North, Suite 339, Clearwater, Florida 33760.

183. The P. O. Box Address listed on the A. B. and J. A. contracts conflict with Respondent's business address as represented by Respondent to the Department in his ALIS profile. The P. O. Box Address also conflicts with the business address for IPA as represented by Respondent to the Division of Corporations.

184. Regardless of whether Respondent was advised that he could use the P. O. Box Address as his business address, Respondent failed to register the P. O. Box Address as his business address or as IPA's business address with the Department or the Division of Corporations.

185. Respondent violated section 626.8796(2), Florida Statutes, by using an address on the A. B. and J. A. contracts that he did not register with the Department or the Division of Corporations.

186. The conflicts in the addresses used in A. B. and J. A. contracts, the information in Respondent's ALIS profile, and IPA's annual report with the Division of Corporations prove Respondent violated section 626.8796(2), Florida Statutes.

SUBPART 3. DISCUSSION OF THE THRESHOLD ISSUES RELATED TO COUNTS VI, IX, AND X OF THE COMPLAINT

187. Counts VI, IX, and X require analysis of two threshold issues: 1) as to Counts VI and X, whether appraising is conduct that falls within the scope of the definition of a public adjuster

in section 626.854(1), Florida Statutes, and 2) as to all three counts, whether the Department has the authority to discipline a licensee for conduct occurring outside the scope of their licensure.

APPRAISAL IS CONDUCT THAT FALLS WITHIN THE SCOPE OF A PUBLIC
ADJUSTER'S LICENSE

188. The term "Public Adjuster" is defined in section 626.854(1), Florida Statutes.

A "public adjuster" is any person, except a duly licensed attorney at law as exempted under s. 626.860, who, for money, commission, or any other thing of value, directly or indirectly prepares, completes, or files an insurance claim for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of a public adjuster, an insured, or a third-party claimant.

189. Section 626.854(1), Florida Statutes, sets out several tests to determine whether an individual is acting as a public adjuster. There are two tests germane to the issue at bar.

190. Under the first test, individuals act as a public adjuster when they: directly or indirectly act or aid in the negotiation for or in effecting a settlement of a claim or loss damage covered by an insurance contract, on behalf of an insured, for money, commission, or any other thing of value.

191. Under the second test, individuals act as a public adjuster when they: directly or indirectly investigate a claim, on behalf of a public adjuster, insured, or third-party claimant, for money, commission, or any other thing of value.

192. Reichle testified:

An appraiser is chosen by either the insured or the carrier, and they are designed to - - or the position is designed to facilitate the settlement of the claim. They act on behalf of either the insured or of the carrier. And they review the loss and try and come up with

what they feel is a fair price and scope of damages, report to each other, and the two appraisers supposedly try to work it out.

[T. 79; Ln. 9-17].

193. The Court heard the testimony of Holbrook, Reichle, and Respondent, who all testified that inspections of the subject property are part of their work as appraisers.

194. The inspections that appraisers conduct involve testing physical features of the subject property. [T. 114 Ln. 6-14].

195. Appraisers make estimates of the damage to the subject property and ultimately write a report of their findings. [T. 364-65 Ln. 13-23; T. 366 Ln. 2-8].

196. Respondent testified that appraisers are compensated for their work and can be hired by public adjusters. [T. 372 Ln. 5-6, 21-22].

197. Reichle further testified that an appraiser's work is related to the resolution of an insurance claim. [T. 79 Ln. 23]. Respondent testified consistently with Reichle on this point. [T. 357-359 Ln. 6-18].

198. Determining the scope of a claim necessarily requires an investigation of the claim.

199. Holbrook's, Reichle's, and Respondent's testimony clearly establishes that appraisers are individuals who directly act or investigate a claim, on behalf of an insured or public adjuster, to affect a settlement of a claim for loss or damage covered by an insurance contract, in return for money. Holbrook's, Reichle's, and Respondent's testimony establishes that the conduct of appraising satisfies the legal criteria for public adjusting as identified in paragraphs 190-91, *supra*.

200. Section 627.70152, Florida Statutes, which concerns the procedure for suits arising under a property insurance contract, provides additional support that appraisers are involved in the settlement of claims. Section 627.70152(4)(b), which outlines the insurer's duties, provides:

If an insurer is responding to a notice provided to the insurer alleging an act or omission by the insurer other than a denial of coverage, the insurer must respond **by making a settlement offer or requiring the claimant to participate in appraisal or another method of alternative dispute resolution.** The time limits provided in s. 95.11 are tolled as long as appraisal or other alternative dispute resolution is ongoing if such time limits expire during the appraisal process or dispute resolution process. **If the appraisal or alternative dispute resolution has not been concluded within 90 days after the expiration of the 10-day notice of intent to initiate litigation specified in subsection (3), the claimant or claimant’s attorney may immediately file suit without providing the insurer additional notice.**

(Emphasis added).

201. Notwithstanding Respondent’s assertion that he was retained as an “appraiser” in Counts VI and X, the testimony elicited at hearing clearly establishes that Respondent’s specific work on those claims involved conducting an inspection or investigation of the claim and that his work involved effecting a potential settlement or resolution of the claim.

202. Because the work of an appraiser falls within the statutory definition of “public adjuster,” an appraiser is subject to the requirements of the Florida Insurance Code. This would include the Adjuster’s Code of Ethics. Accordingly, Respondent is subject to discipline for misconduct occurring during Respondent’s work as an appraiser.

THE DEPARTMENT IS PERMITTED TO PROSECUTE A LICENSEE FOR CONDUCT
OCCURRING OUTSIDE THE SCOPE OF LICENSURE

203. Licensees are always subject to the provisions of the Florida Insurance Code and are always obligated to demonstrate their fitness and trustworthiness to maintain their license to engage in the business of insurance. “Sections 626.611 and 626.621 are part of a legislative scheme for determining whether applicants are qualified and remain qualified and fit to be insurance agents. This scheme is designed to aid the health, safety and welfare of the general public.” *Brewer v. Ins. Comm’r and Treasurer*, 392 So. 2d 593, 596 (1st DCA 1981).

204. In fact, courts have consistently held that an insurance agent licensee may demonstrate a lack of fitness or trustworthiness to engage in the business of insurance by acts unrelated to the insurance business. *See Dep't of Fin. Servs. v. Carll and Crain*, 06-2096 and 06-2097 (DOAH 2007), ¶65, (comparing *Paisley v. Dep't of Ins.*, 526 So. 2d 167 (Fla. 1st DCA 1988) and *Natelson v. Dep't of Ins.*, 454 So. 2d 31, 32 (Fla. 1st DCA 1984) (lack of fitness demonstrated by felony convictions unrelated to insurance) with *Anna Michelle Mack v. Dep't of Fin. Servs.*, 914 So. 2d 986, 988-989 (Fla. 1st DCA 2005), and *Ganter v. Dep't of Insurance*, 620 So. 2d 202 (Fla. 1st DCA 1993) (sales of auto club memberships are ancillary products)); *see also Dep't of Fin. Servs. v. Eberhardt*, 09-3088PL, 09-3089PL 2010 WL 1737091 at ¶ 74 (DOAH April 27, 2010; July 16, 2010).

205. Based on the holdings of *Natelson* and *Paisley*, the Department has the authority to discipline a licensee for conduct occurring outside the scope of licensure.

206. However, further support for the contention that a licensee can be held liable for conduct occurring outside of the scope of licensure can be found in the plain language of section 626.611, Florida Statutes.

207. Section 626.611(1), Florida Statutes, provide grounds for the compulsory suspension or revocation of an agent's license, and provides, in relevant part:

The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, **licensee**, or appointee any one or more of the following applicable grounds exist:

(Emphasis added).

208. Section 626.611(1), Florida Statutes, refers to the listed group of individuals subject to its provisions generally as “applicant” and “licensee.”

209. Because the end of subsection one (1) uses the word “licensee,” the section applies to all licensees regardless of whether they are acting under the scope of their particular licenses.

210. Sections 626.611(1) (a)-(d), (g)-(j), (m), and (n), Florida Statutes, apply generally as to all licensees. In contrast, subsection 626.611(1)(f), Florida Statutes, applies only to adjusters or agents licensed and appointed to adjust claims, and subsection 626.611(1)(l), Florida Statutes, only applies to general lines agents, life agents, and health agents. Accordingly, any argument that section 626.611(1)(g), Florida Statutes, does not apply to Respondent as a licensee is without merit.

211. Even if this Court finds that the conduct of appraising does not fall within the definition of public adjusting, Respondent must still behave in a manner that demonstrates his fitness and trustworthiness to engage in the business of insurance while acting as an appraiser.

212. Because Respondent is always required to demonstrate fitness and trustworthiness to engage in the business of insurance, Respondent is subject to discipline under the Florida Insurance Code for his conduct while acting as an appraiser and expert witness.

SUBPART 4. DISCUSSION OF THE DEPARTMENT’S CHARGES AS TO COUNTS VI, IX,
AND X OF THE COMPLAINT

COUNT VI

- a. Sections 626.854(14), (14)(b), and (14)(c), Florida Statutes, and Rule 69B-220.201(3)(f),
Florida Administrative Code

213. The Department has proven by clear and convincing evidence that Respondent has violated sections 626.854(14), (14)(b), and (14)(c), Florida Statutes, and Rule 69B-220.201(3)(f), *Florida Administrative Code*, as charged in Count VI of the Complaint, by obstructing and

preventing Lloyds of London from having reasonable access to M. K.'s property.

214. The Department has proven this allegation by establishing that Respondent unilaterally terminated the attempted inspection of M. K.'s property by the appraiser, Reichle. The record evidence established that Respondent unreasonably terminated the appraisal inspection based on his unfounded conclusion that Reichle had engaged in an inappropriate interview with the property manager of the M. K. property.

215. Reichle testified that he never interviewed the property manager. Respondent was not present for any conversation between Reichle and the property manager and, therefore, Respondent had no legitimate basis to terminate the appraisal inspection.

216. The evidence clearly establishes that the appraisal inspection of the M. K. property would have occurred but for Respondent's unreasonable unilateral termination of the inspection. Respondent's conduct unnecessarily delayed the resolution of M. K.'s claim.

b. Section 626.611(1)(g), Florida Statutes⁷

217. The Department has proven by clear and convincing evidence that Respondent has violated section 626.611(1)(g), Florida Statutes, as charged in Count VI of the Complaint, by demonstrating a lack of fitness and trustworthiness to engage in the business of insurance during his involvement in the M. K. claim.

218. Respondent's lack of fitness and trustworthiness was demonstrated in Count VI of the Complaint based on Respondent's failure to adhere to basic ethical principles by violating the Adjuster's Code of Ethics and by Respondent's threatening and aggressive treatment of Reichle during their inspection of the M. K. property.

COUNT IX

a. Sections 626.854(14), (14)(b), and (14)(c), Florida Statutes, and Rule 69B-220.201(3)(f),

⁷ The Department incorporates the arguments from paragraphs 154-156, *supra* as if fully argued herein.

Florida Administrative Code

219. The Department has proven by clear and convincing evidence that Respondent has violated sections 626.854(14), (14)(b), and (14)(c), Florida Statutes, and Rule 69B-220.201(3)(f), *Florida Administrative Code*, as charged in Count IX of the Complaint, by obstructing and preventing QBE from having reasonable access to necessary information to respond to claim.

220. The Department has proven this allegation based on the Order issued in *Douglas vs. QBE*. The Order clearly demonstrates that Respondent refused to cooperate during two depositions that were scheduled in the matter. [Appendix A, B]. The Plaintiff listed Respondent as an expert witness, and defense counsel attempted to depose Respondent on two occasions. Respondent's conduct during the two depositions was so outrageous that he was stricken by the court as an expert witness.

221. The evidence clearly establishes that the totality of Respondent's behavior during his involvement in *Douglas v. QBE* led to a six-month delay in the proceedings and proves his failure to act with dispatch.

b. Section 626.611(1)(g), Florida Statutes⁸

222. The Department has proven by clear and convincing evidence that Respondent has violated section 626.611(1)(g), Florida Statutes, as charged in Count IX of the Complaint, by demonstrating a lack of fitness and trustworthiness to engage in the business of insurance during his involvement in *Douglas v. QBE*.

223. Respondent's behavior as an expert witness in *Douglas v. QBE* is directly related to his fitness as a public adjuster. Public adjusters are regularly subpoenaed to provide testimony in hearings as part of their responsibilities within a claim. [T. 487 Ln. 12, 15]. Respondent's

⁸ The Department incorporates the arguments from paragraphs 154-156, *supra* as if fully argued herein.

conduct in *Douglas v. QBE* shows flagrant disregard for the obligation to cooperate with the court process.

224. The Department has proven Respondent's lack of fitness and trustworthiness in Count IX of the Complaint based on the following: Respondent's aggressive and hostile behavior toward process servers, court reporters, and counsel for QBE; his refusal to be placed under oath during his deposition; his hostile and disparaging emails to counsel for QBE; his correspondence with individuals unrelated to the litigation in *Douglas v. QBE*; and his failure to conduct himself with professionalism.

COUNT X

- a. Sections 626.854(14), (14)(b), and (14)(c), Florida Statutes, and Rule 69B-220.201(3)(f), *Florida Administrative Code*

225. The Department has proven by clear and convincing evidence that Respondent has violated sections 626.854(14), (14)(b), and (14)(c), Florida Statutes, and Rule 69B-220.201(3)(f), *Florida Administrative Code*, as charged in Count X of the Complaint, by obstructing and preventing Citizens from having reasonable access to L. M.'s property.

226. The Department has proven this allegation by establishing that Respondent unilaterally terminated appraiser Holbrook's attempted inspection of L. M.'s property.

227. The evidence established that Respondent unreasonably terminated the appraisal inspection based on his unfounded assertion that Holbrook did not have permission from L. M. - Wife to begin his inspection. Respondent subsequently admitted that Holbrook did in fact have permission to begin the inspection. [Admitted, T. 99 Ln. 9].

228. The evidence clearly establishes that the appraisal inspection of the L. M. property could have occurred but for Respondent's unreasonable unilateral termination of the inspection.

229. During the L. M. claim, Respondent engaged in a course of communication which

delayed a timely resolution of the claim.

230. Respondent's conduct in terminating the appraisal inspection and his email correspondence unnecessarily delayed a resolution of L. M.'s claim.

b. Section 626.611(1)(g), Florida Statutes⁹

231. The Department has proven by clear and convincing evidence that Respondent has violated section 626.611(1)(g), Florida Statutes, as charged in Count X of the Complaint, by demonstrating a lack of fitness and trustworthiness to engage in the business of insurance during his involvement in the L. M. claim.

232. The Department has proven Respondent's lack of fitness and trustworthiness in Count X of the Complaint based on the following: Respondent's failure to adhere to basic ethical principles by violating the Adjuster's Code of Ethics; Respondent's unjustified, unilateral termination of the appraisal inspection; Respondent's conduct during the May 15, 2019, inspection; Respondent's behavior during the September 18, 2019, umpire meeting; and Respondent's disparaging and unprofessional emails with Holbrook, Cimpler, Lozano, and Citizens.

233. Prior to the hearing, Respondent alleged that Holbrook did not have permission from L. M. - Wife to begin inspection of L. M.'s property. During the hearing, Respondent later admitted that Holbrook had permission from L. M. – Wife. [Admitted, T. 98 Ln. 20-24, T. 99 Ln. 9]. The Department argues that this constituted a misrepresentation by Respondent, and it is evidence of his lack of fitness and trustworthiness.

234. The Department notes the fact that Respondent persisted in sending emails copying multiple people unrelated to the L. M. claim, despite repeated requests from Cimpler to refrain

⁹ The Department incorporates the arguments from paragraphs 154-156, *supra* as if fully argued herein.

from engaging in this harassing behavior, is additional proof of Respondent's lack of fitness and trustworthiness.

SUBPART 5. CONCLUSION AND PENALTY RECOMMENDATION

235. Respondent testified at hearing that “[a] public adjuster advocates on the part of the homeowner – advocates on the part of a homeowner, sir for an insurance company. The job of a public adjuster is not to be evasive or not to be disruptive or not to be contentious. The job of a public adjuster is to assist the insured with their claim, but also make sure that you follow Florida Statutes, make sure that you look out for the insured's best interest.” [T. 339-40 Ln. 19-2].

236. Despite Respondent's testimony that the role of a public adjuster is not to be disruptive or contentious, the record is filled with numerous examples of Respondent disrupting and delaying the claim resolution process. Respondent's disruptive behavior extended to the hearing in the instant case. The record has numerous examples where Respondent was evasive or disruptive to the proceedings, including refusing to answer basic questions. [T. 454-56, 460, 462-77, 497-98, 503, 506, 512, 514].

237. The record evidence shows that Respondent engages in a course of conduct during claims wherein he obstructs the insurer's participation in the claims process, reasonable access to the subject properties, and information related to the claims. This is proven by his repeated demands that claim-related work occur only on Saturdays instead of regular business hours as demonstrated in Counts I, III, and IX. The record evidence established that conducting activities such as inspections on Saturdays prevents the insurers from being able to contact and work with contractors that may be necessary for an inspection.

238. The detrimental effect of Saturday inspections was demonstrated in Count I of the Complaint. Stav Roach testified how she was unable to negotiate for a reasonable price for tarp

removal because the vendor's office was closed. This detrimental effect was further demonstrated during the June 29, 2019, inspection, when Respondent demanded Bamburg call his supervisor to discuss Citizens assuming liability for Ashraf and his vendor.

239. Respondent's demand that meetings necessary for the resolution or settlement of claims occur on Saturday is done for the purpose of interfering with the insurer's ability to respond to the claim.

240. Respondent does not limit his tactic of scheduling events on Saturday to inspections. In *Douglas v. QBE*, Respondent attempted to unilaterally reschedule his deposition for a Saturday. [Appendix B].

241. Respondent's efforts to obstruct insurers' participation in the claims process is further demonstrated by his unreasonable and unilateral termination of inspections in Counts I, IV, VI, and X and his termination of depositions and EUOs in Counts V and IX.

242. Respondent has also demonstrated a course of conduct where he engages in harassment of insurers' employees and contractors. This Court heard testimony from Stav Roach, Quintana, Medeiros, Berns, Reichle, and Holbrook stating how Respondent harassed each of them in their time working with Respondent. Respondent's repeated hostile behavior is designed to make the process inhospitable to the insurer in the hopes of securing a better claim for his client.

243. Respondent's harassment is not limited to his personal interactions with employees and contractors of insurers. Respondent also regularly uses disparaging and unprofessional language in his emails with insurers and opposing parties. [Dept. Exs. 4, 6, 12, 21, 27, 29, 30, 32, and 33; Appendix C; Official Recognition – Court Order]. Respondent also regularly includes people in his correspondences who have no relation to the matter being discussed. [*Id.*]. This

behavior is done with the sole purpose of harassment. Respondent even engaged in this course of conduct with the Department when he was under investigation by Glenn Chapter. [T. 211-12].

244. The evidence has shown that Respondent repeatedly makes unfounded accusations of a lack of ethics or dishonesty of any opposing party in his claims.

245. Respondent persists in using disparaging and defamatory language in his interactions with insurers and opposing appraisers, even after receiving two prior letters of guidance from the Department. [Dept. Ex. 34, 35]. Respondent's continued demonstration of a lack of regard for the Department's regulatory authority demonstrates he is not fit to maintain licensure as a public adjuster.

246. Respondent demonstrates aggressive and abrasive behavior in his personal interactions with insurer's employees and contractors as demonstrated in Counts I, IV, V, IV, IX, and X. [Dept. Ex. 18, 23a, 25, 31].

247. On two separate occasions, Respondent's hostile behavior caused court reporters to leave depositions or EUO's. [Dept. Ex. 23a; Appendix A].

248. Finally, Respondent engaged in misleading and deceptive behavior in Counts I, III, and X. Respondent made knowing misrepresentations regarding his clients' availability for inspections and a misrepresentation concerning L. M. – Wife providing consent for Holbrook to inspect the L. M. property.

249. Respondent's ability to achieve a favorable outcome for his clients has no bearing on whether a violation of the Florida Insurance Code has occurred. The Florida Insurance Code is as concerned with protecting the citizens of Florida by ensuring that they have access to successful licensees as it is with ensuring that its licensees can follow basic principles of ethics and fairness.

250. The penalty guidelines for violations of the Florida Insurance Code are found in chapter 69B-231, *Florida Administrative Code*.

251. According to Rule 69B-231.080(7), *Florida Administrative Code*, a violation of section 626.611(1)(g), Florida Statutes, is punishable by a 6-month suspension, pursuant to Rule 69B-231.090(2), *Florida Administrative Code*. A violation of section 626.621(2), Florida Statutes, is punishable by a 3-month suspension, pursuant to Rule 69B-231.120, *Florida Administrative Code*. A willful violation of sections 626.854(14), (14)(b), or (14)(c), Florida Statutes, and section 626.8796, Florida Statutes, and Rule 69B-220.201(3)(f), *Florida Administrative Code*, is punishable by a six-month suspension, and a nonwillful violation is punishable by a three-month suspension. Additionally, pursuant to section 626.8698(6), Florida Statutes, this Court has the authority to impose a \$5,000 fine for each of Respondent's violations of Rule 69B-220.201, *Florida Administrative Code*.

252. Respondent's failure to place his permanent business address on his contracts as alleged in Counts VII and VIII is a willful violation of the Florida Insurance Code.

253. Pursuant to Rule 69B-231.040, *Florida Administrative Code*, in determining the correct recommended penalty in the instant case, this Court is required to determine the highest penalty of the proven statutes in each count to determine the "penalty per count." After adding the penalty per count, the Court will determine the "total penalty." Pursuant to Rule 69B-231.040, *Florida Administrative Code*, this Court is then required to adjust the total penalty for any aggravating or mitigating factors to determine the "final penalty."

254. The penalty per count for the proven allegations in the Complaint is equal to six months per count, for a total penalty of 54 months.

255. The Department asserts that the following aggravating factors, pursuant to Rule 69B-231.160(1), *Florida Administrative Code*, are applicable to Counts I, III, IV, V, VI, IX, and X in the instant case: (a) willfulness of licensee's conduct, (k) existence of secondary violation in counts, and (l) prior warnings by the Department. The Department would argue that no mitigating factors are applicable in the instant case. Even if this Court finds mitigating factors, then they are substantially outweighed by the aggravating factors.

256. Because the total penalty in this case exceeds a period of suspension of more than twenty-four months, the appropriate penalty to impose against Respondent is revocation of licensure pursuant to Rule 69B-231.040(3), *Florida Administrative Code*.

257. Section 120.695, Florida Statutes, does not apply in the instant case because its applicability is limited to an issuance of a notice of noncompliance for a violation of an agency's rules. The plain language of section 120.695, Florida Statutes, makes it inapplicable to a violation of statute. As argued previously, all of Respondent's violations of the rule-based Adjuster's Code of Ethics are violations of section 626.611(1), Florida Statutes.

258. Section 626.611(1), Florida Statutes, provides, in relevant part:

The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist...

(Emphasis added).

259. The plain language of section 626.611(1), Florida Statutes, shows a clear legislative intent that violations of section 626.611, Florida Statutes, must be disciplined with a more severe sanction than an issuance of a notice of noncompliance.

260. Further support for the inapplicability Respondent's arguments concerning section 120.695, Florida Statutes, can be found in section 626.8698(6), Florida Statutes.

261. Section 626.8698(6), Florida Statutes, provides that "[t]he department may deny, suspend, or revoke the license of a public adjuster or public adjuster apprentice, and administer a fine not to exceed \$5,000 per act, for any of the following: [v]iolating any ethical rule of the department."

262. By permitting the Department to impose suspension, revocation, or a fine for a violation of the Adjusters Code of Ethics, the Legislature has evidenced a clear directive that violations of the Adjuster's Code of Ethics cannot be minor violations for which the issuance of a notice of noncompliance would be appropriate.

263. Assuming *arguendo* that the Department failed to comply with section 120.695, Florida Statutes, the Department's failure would only limit the discipline that can be imposed and would not prohibit a finding that Respondent violated the Florida Insurance Code.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

CONCLUSION

264. Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a Final Order be entered revoking Respondent’s license as a public adjuster.

RESPECTFULLY SUBMITTED, this 16th day of December 2022

/s/ Marshawn Griffin
Marshawn Michael Griffin
Florida Bar No.: 98516
Chief Legal Counsel
Florida Department of Financial Services
Office of the General Counsel
200 East Gaines St.
Tallahassee, Florida 32399-0333
(850) 413-4141
Marshawn.Griffin@myfloridacfo.com

/s/ Greg Caracci
Greg Caracci
Florida Bar No.: 116687
Senior Attorney
Florida Department of Financial Services
Office of the General Counsel
200 East Gaines St.
Tallahassee, Florida 32399-0333
(850) 413-4265
Greg.Caracci@myfloridacfo.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copy of the foregoing Department’s Proposed Written Report and Recommended Order has been furnished to counsel for Respondent via the DOAH e-filing portal on this 16th day of December 2022.

/s/ Marshawn Griffin
Marshawn Michael Griffin