

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED
MAR - 7 2012

DEPARTMENT OF REAL ESTATE
By *R. M. A.*

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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-4158 SD
13 HALCYON REAL ESTATE, INC.,)
14 MITCHELL THOMAS COMPTON, II,) STIPULATION AND AGREEMENT
15 HEATHER MARIE THOMASELLI)
16 and JAMES WATSON BRENNAN,)
17 Respondents.)

18 It is hereby stipulated by and between Respondents HALCYON REAL
19 ESTATE, INC., ("HALCYON"), HEATHER MARIE THOMASELLI, ("THOMASELLI"),
20 and JAMES WATSON BRENNAN, ("BRENNAN"), (collectively "Respondents"), acting by
21 and through Frank M. Buda, Counsel for Respondents, and the Complainant, acting by and
22 through John W. Barron, Counsel for the Department of Real Estate, ("the Department"), as
23 follows for the purpose of settling and disposing of the Accusation filed on December 9, 2010,
24 in this matter:

25 1. All issues which were to be contested and all evidence which was to be
26 presented by Complainant and Respondents at a formal hearing on the Accusation, which
27 hearing was to be held in accordance with the provisions of the Administrative Procedure Act

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1 ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions
2 of this Stipulation and Agreement.

3 2. Respondents have received, read and understand the Statement to
4 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department
5 of Real Estate in this proceeding.

6 3. On December 21, 2010, Respondents filed Notices of Defense pursuant
7 to Section 11505 of the Government Code for the purpose of requesting a hearing on the
8 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said
9 Notices of Defense. Respondents acknowledge that Respondents understand that by
10 withdrawing said Notice of Defense, Respondents will thereby waive Respondents' right to
11 require the Commissioner to prove the allegations in the Accusation at a contested hearing held
12 in accordance with the provisions of the APA and that Respondents will waive other rights
13 afforded to Respondents in connection with the hearing such as the right to present evidence in
14 defense of the allegations in the Accusation and the right to cross-examine witnesses.

15 4. This Stipulation is based on the factual allegations contained in the
16 Accusation. In the interest of expedience and economy, Respondents choose not to contest
17 these factual allegations, but to remain silent and understand that, as a result thereof, these
18 factual statements will serve as a prima facie basis for the "Determination of Issues" and
19 "Order" set forth below. The Real Estate Commissioner shall not be required to provide further
20 evidence to prove such allegations.

21 5. This Stipulation and Respondents' decision not to contest the Accusation
22 are made for the purpose of reaching an agreed disposition of this proceeding and are expressly
23 limited to this proceeding and any other proceeding or case in which the Department of Real
24 Estate, the State or the federal government, an agency of this State, or an agency of another state
25 is involved.

26 6. It is understood by the parties that the Real Estate Commissioner may
27 adopt the Stipulation and Agreement as her decision in this matter, thereby imposing the penalty

1 and sanctions on Respondents' real estate licenses and license rights as set forth in the "Order"
2 below. In the event that the Commissioner in her discretion does not adopt the Stipulation and
3 Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing
4 and proceeding on the Accusation under all the provisions of the APA and shall not be bound
5 by any admission or waiver made herein.

6 7. This Stipulation and Agreement shall not constitute an estoppel, merger
7 or bar to any further administrative or civil proceedings by the Department of Real Estate with
8 respect to any matters which were not specifically alleged to be causes for accusation in this
9 proceeding.

10 8. In lieu of proceeding in this matter in accordance with the provisions of
11 the APA, HALCYON wishes to voluntarily surrender its corporate real estate broker licenses
12 issued by the Department, pursuant to Business and Professions Code (Code) Section 10100.2.
13 BRENNAN is an officer of HALCYON, and is authorized to sign this declaration on behalf of
14 HALCYON. BRENNAN is represented by counsel, and is acting on behalf of HALCYON.

15 9. BRENNAN understands that by so voluntarily surrendering
16 HALCYON's license, HALCYON may be relicensed as a broker corporation only by
17 petitioning for reinstatement pursuant to Section 11522 of the Government Code. BRENNAN
18 also understands that by so voluntarily surrendering HALCYON's license, Respondents agree to
19 the following:

20 a. The filing of this Stipulation and Agreement shall be deemed as
21 HALCYON's declaration and petition for voluntary surrender.

22 b. It shall also be deemed to be an understanding and agreement by
23 HALCYON that it waives all rights HALCYON has to require the Commissioner to prove the
24 allegations contained in the Accusation filed in this matter at a hearing held in accordance with
25 the provisions of the APA, and that HALCYON also waives other rights afforded to

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1 HALCYON in connection with the hearing such as the right to discovery, the right to present
2 evidence in defense of the allegations in the Accusation and the right to cross-examine
3 witnesses.

4 10. BRENNAN on behalf of HALCYON further agrees that upon acceptance
5 by the Commissioner, as evidenced by an appropriate order, all affidavits and all relevant
6 evidence obtained by the Department in this matter prior to the Commissioner's acceptance, and
7 all allegations contained in the Accusation filed in the Department Case No. H-4158 SD, may
8 be considered by the Department to be true and correct for the purpose of deciding whether to
9 grant relicensure or reinstatement pursuant to Government Code Section 11522.

10 11. BRENNAN on behalf of HALCYON freely and voluntarily surrenders
11 all HALCYON's licenses and license rights under the Real Estate Law.

12 DETERMINATION OF ISSUES

13 By reason of the foregoing stipulations, admissions and waivers and solely for
14 the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed
15 that the acts and omissions of Respondents described in the Accusation are grounds for the
16 suspension or revocation of the licenses and license rights of Respondents HALCYON and
17 THOMASELLI under the provisions of Section 10145 of the Business and Professions Code
18 ("the Code"), and Sections 2726 and 2831.2 of Title 10 of the California Code of Regulations,
19 ("the Regulations"); and the licenses and license rights of Respondent BRENNAN under Section
20 2726 of the Regulations.

21 ORDER

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23 HALCYON's petition for voluntary surrender of its corporate real estate broker
24 licenses is accepted as of the effective date of this Order as set forth below, based upon the
25 understanding and agreement expressed in Respondents' Declaration incorporated herein as
26 part of this Stipulation and Agreement. HALCYON's license certificates, pocket cards, and

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1 any branch office license certificates shall be sent to the below listed address so that they reach
2 the Department on or before the effective date of this Order:

3 DEPARTMENT OF REAL ESTATE
4 Attn: Licensing Flag Section
5 P. O. Box 187000
6 Sacramento, CA 95818-7000

7 2

8 1. All licenses and licensing rights of HEATHER MARIE THOMASELLI
9 under the Real Estate Law are suspended for a period of thirty (30) days from the effective date
10 of this Order; provided, however, that the thirty (30) days of said suspension shall be stayed in
11 its entirety for two (2) years upon the following terms and conditions:

12 a. HEATHER MARIE THOMASELLI shall obey all laws, rules and
13 regulations governing the rights, duties and responsibilities of a real estate licensee in the State
14 of California; and

15 b. That no final subsequent determination be made, after hearing or upon
16 stipulation, that cause for disciplinary action occurred within two (2) years from the effective
17 date of this Order. Should such a determination be made, the Commissioner may, in her
18 discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed
19 suspension. Should no such determination be made, the stay imposed herein shall become
20 permanent.

21 2. HEATHER MARIE THOMASELLI shall, within six (6) months from
22 the effective date of this Order, take and pass the Professional Responsibility Examination
23 administered by the Department, including the payment of the appropriate examination fee. If
24 HEATHER MARIE THOMASELLI fails to satisfy this condition, the Commissioner may
25 order the suspension of all licenses and licensing rights of HEATHER MARIE THOMASELLI
26 until HEATHER MARIE THOMASELLI passes the examination.

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1. All licenses and licensing rights of JAMES WATSON BRENNAN
under the Real Estate Law are publicly reprovod pursuant to Section 495 of the Code.

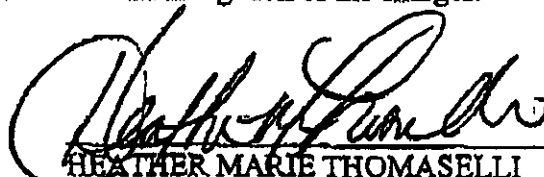
12/13/11

DATED


JOHN W. BARRON, Counsel
Department of Real Estate

I have read the Stipulation and Agreement and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

12/12/11
DATED


HEATHER MARIE THOMASELLI
Respondent

12/12/11
DATED


JAMES WATSON BRENNAN
Respondent and on behalf of
HALCYON REAL ESTATE, INC.

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I have reviewed this Stipulation and Agreement and Order as to form and content and have advised my clients accordingly.

12.13.11

Frank M. Buda

DATED

FRANK M. BUDA
Attorney for Respondents,
HALCYON REAL ESTATE, INC.,
HEATHER MARIE THOMASELLI and
JAMES WATSON BRENNAN

The foregoing Stipulation and Agreement is hereby adopted by me as my Decision in this matter as to Respondents HALCYON REAL ESTATE, INC., HEATHER MARIE THOMASELLI and JAMES WATSON BRENNAN and shall become effective at 12 o'clock noon on _____

IT IS SO ORDERED _____

BARBARA J. BIGBY
Acting Real Estate Commissioner

1 *I have reviewed this Stipulation and Agreement and Order as to form and*
2 *content and have advised my clients accordingly.*

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5 DATED

FRANK M. BUDA
Attorney for Respondents,
HALCYON REAL ESTATE, INC.,
HEATHER MARIE THOMASELLI and
JAMES WATSON BRENNAN

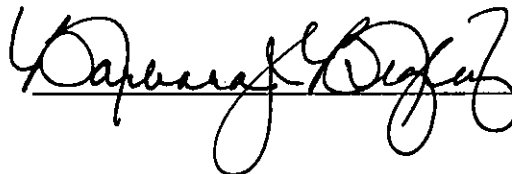
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10 The foregoing Stipulation and Agreement is hereby adopted by me as my
11 Decision in this matter as to Respondents HALCYON REAL ESTATE, INC., HEATHER
12 MARIE THOMASELLI and JAMES WATSON BRENNAN and shall become effective at 12
13 o'clock noon on **MAR 28 2012**

14 IT IS SO ORDERED

3/5/12

15 BARBARA J. BIGBY
16 Acting Real Estate Commissioner

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1 JOHN W. BARRON, Counsel (SBN 171246)
2 Department of Real Estate
3 P.O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0792

FILED

DEC - 9 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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12 In the Matter of the Accusation of)
13 HALCYON REAL ESTATE, INC.,) No. H-4158 SD
14 MITCHELL THOMAS COMPTON, II,) ACCUSATION
15 HEATHER MARIE THOMASELLI,)
16 and JAMES WATSON BRENNAN,)
17 Respondents.)

18 The Complainant, JOSEPH AIU, a Deputy Real Estate Commissioner of the
19 State of California, for cause of Accusation against HALCYON REAL ESTATE, INC., dba
20 "Main St Mortgage Modification", "Main St Realty", "MainStreet Mortgage Modification",
21 "Main Street Mortgage Modification", "Main Street Mortgage Modifications" and "MainStreet
22 Mortgage Modifications" (hereafter "HALCYON"), MITCHELL THOMAS COMPTON, II,
23 (hereafter "COMPTON"), HEATHER MARIE THOMASELLI (hereafter "THOMASELLI")
24 and JAMES WATSON BRENNAN (hereafter "BRENNAN"), (hereafter collectively
25 "Respondents"), is informed and alleges as follows:

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27 The Complainant makes this Accusation in his official capacity.

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HALCYON is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereafter "the Code"), as a corporate real estate broker.

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COMPTON is presently licensed under the Code as a real estate broker. During the period from May 16, 2006, to May 13, 2009, COMPTON was licensed by the Department as the designated broker/officer of HALCYON. As the designated broker/officer, COMPTON was responsible, pursuant to Section 10159.2 (Responsibility of Corporate Officer in Charge) of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of HALCYON for which a real estate license is required. He is also the President and 40% shareholder of HALCYON.

4

THOMASELLI is presently licensed under the Code as a real estate broker. During the period from May 13, 2009, to March 3, 2010, THOMASELLI was licensed by the Department as the designated broker/officer of HALCYON. As the designated broker/officer, THOMASELLI was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of HALCYON for which a real estate license is required.

5

BRENNAN is presently licensed under the Code as a real estate salesperson. He is also the Vice-President and 60% shareholder of HALCYON.

6

At all times herein mentioned, Respondents performed services for one or more borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: negotiate one or more loans for, or perform services for, borrowers and/or lenders with respect to loan modification, loan refinance, principal reduction,

1 foreclosure abatement or short sale services and/or those borrowers' lenders in connection with
2 loans secured directly or collaterally by one or more liens on real property.

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4 Whenever reference is made in an allegation in this Accusation to an act or
5 omission of HALCYON, such allegation shall be deemed to mean that the officers, directors,
6 employees, agents and real estate licensees employed by or associated with HALCYON
7 committed such act or omission while engaged in furtherance of the business or operations of
8 HALCYON and while acting within the course and scope of their corporate authority and
9 employment.

10 FIRST CAUSE OF ACTION

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12 On or about January 13, 2010, and continuing intermittently through February 26,
13 2010, an audit was conducted at Respondents' main office located at 404 14th Street, San Diego,
14 California, where the auditor examined the records for the period of December 1, 2008, through
15 December 31, 2009 (the audit period).

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17 While acting as a real estate broker as described in Paragraph 6, above, and within
18 the audit period, HALCYON accepted or received funds in trust (trust funds) from or on behalf
19 of lenders, investors, borrowers and others in connection with mortgage activities, and deposited
20 or caused to be deposited those funds into a bank account maintained by HALCYON, including:

21 Bank Account #1:

22 San Diego Private Bank
23 9404 Genesee Avenue, Suite 100
24 La Jolla, California 92037

25 Account No.: 1040002964

26 Account Name: Halcyon Real Estate Inc. DBA Main Street
27 Mortgage Modification

1 Signatories: James W. Brennan
2 Heather Thomaselli

3 Thereafter, from time-to-time, Respondents made disbursements of said trust funds.

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5 In the course of the activities described in Paragraph 6, above, in connection with
6 the collection and disbursement of trust funds:

7 (a) HALCYON failed to designate Bank Account #1, in which advance fees
8 related to loan modification activities were deposited, as a trust account or under the name of
9 HALCYON as trustee. Such acts and/or omissions violate Sections 10145 (handling of trust
10 funds) and 10146 (advance fees to be deposited in trust account) of the Code, and Section 2832
11 (trust fund handling) of Title 10, Chapter 6, California Code of Regulations (hereafter "the
12 Regulations").

13 (b) HALCYON received advance fees by check and credit card payments.
14 Some American Express credit card transactions incurred a merchant fee, which was deducted
15 from the charged amount before being deposited in Bank Account #1. A transfer equal to the
16 merchant fee amount was transferred from HALCYON's general account into Bank Account #1
17 between three (3) days and twenty seven (27) days after the net amount was deposited, including:

<u>Card holder/ Borrower Name</u>	<u>Date and Amount of Charge</u>	<u>Date and Amount of Net Deposit</u>	<u>Date and Amount of Transfer</u>
20 Kim	01/23/09 \$4,245.00	01/27/09 \$4,109.16	01/30/09 \$135.84
21 Belmontez	01/28/09 \$3,495.00	02/03/09 \$3,383.16	03/02/09 \$111.84
22 McCorkell	02/26/09 \$ 875.00	03/02/09 \$ 847.00	03/11/09 \$ 28.00

23 During the time between the net credit card deposit and the transfer from the
24 general account noted above, the balance of Bank Account #1 was \$275.68 less than
25 HALCYON's accountability to all owners of the trust funds in Bank Account #1. There is no
26 evidence that the owners of the trust funds gave written consent to allow HALCYON to reduce
27 the balance of funds in Bank Account #1 to an amount less than the existing aggregate trust fund

1 liability of HALCYON. Such acts and/or omissions violate Sections 10145 of the Code, and
2 Section 2832.1 (trust fund handling for multiple beneficiaries) of the Regulations.

3 (c) HALCYON failed to include the date in which trust funds were received
4 in its Record of Trust Funds Received and Disbursed (control record). In addition, the control
5 record individually listed the funds deposited in Bank Account #1. However, the control record
6 did not provide a total for bank deposits consisting of more than one individual's fee collected
7 (group deposit). There is no deposit register/journal or other record which listed the total of the
8 group deposit. Such acts and/or omissions violate Section 10145 of the Code, and Sections
9 2831.1 (separate records for each beneficiary or transaction) and 2832.1 of the Regulations.

10 (d) HALCYON failed to prepare or maintain a monthly reconciliation of the
11 separate records with the control record. Such acts and/or omissions violate Section 10145 of
12 the Code and Section 2831.2 (trust account reconciliation) of the Regulations.

13 (e) BRENNAN is listed as a signatory on Bank Account #1. However,
14 BRENNAN did not have written authorization to sign on Bank Account #1. Such acts and/or
15 omissions violate Section 10145 of the Code and Section 2834 (trust account withdrawals) of
16 the Regulations.

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18 The acts and/or omissions of Respondent HALCYON as alleged in Paragraph
19 10, above, violate Sections 10145 and 10146 of the Code, and Sections 2831.1, 2831.2, 2832,
20 2832.1 and 2834 of the Regulations.

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22 The acts and/or omissions of Respondent HALCYON, as alleged in Paragraph
23 10, above, are grounds for discipline under Sections 10177(d) (willful disregard/violation of real
24 estate law) and 10177(g) (demonstrated negligence or incompetence performing act required to
25 hold license) of the Code. In addition, the Department is entitled to reimbursement for the costs
26 of its audit pursuant to Section 10148 (cost of audit in final decision following disciplinary
27 hearing) of the Code.

1 SECOND CAUSE OF ACTION

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3 At all times mentioned herein, BRENNAN was employed as a real estate
4 salesperson for HALCYON. However, HALYCON did not have a written broker-salesperson
5 relationship agreement with BRENNAN. Such acts and/or omissions violate Section 2726
6 (Required contents of broker-salesperson relationship agreements) of the Regulations.

7 14

8 The acts and/or omissions of Respondents HALCYON and BRENNAN, as
9 alleged in Paragraph 13, above, are grounds for discipline under Sections 10177(d) and 10177(g)
10 of the Code.

11 THIRD CAUSE OF ACTION

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13 Complainant refers to Paragraphs 1 through 14, above, and incorporates them
14 herein by reference.

15 16

16 For the period of May 16, 2006, through May 13, 2009, COMPTON was
17 responsible, as the designated broker/officer for HALCYON, for the supervision and control of
18 the activities conducted on behalf of the corporation by its officers and employees. COMPTON
19 failed to exercise reasonable supervision and control over the property mortgage loan brokering
20 activities of HALCYON. In particular, COMPTON permitted, ratified and/or caused the
21 conduct described in the First and Second Causes of Action, above, to occur, and failed to take
22 reasonable steps, including, but not limited to, the handling of trust funds, supervision of
23 employees and the implementation of policies, rules, procedures and systems to ensure the
24 compliance of the corporation with the Real Estate Law and the Regulations.

25 17

26 The acts and/or omissions of COMPTON set forth in Paragraph 16, above,
27 violate Section 10159.2 of the Code and Section 2725 (Broker Supervision) of the Regulations,

1 and constitute grounds for disciplinary action under Section 10177(h) (Further Grounds for
2 Disciplinary Action – Supervision Responsibility of Broker) of the Code.

3 FOURTH CAUSE OF ACTION

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5 Complainant refers to Paragraphs 1 through 14, above, and incorporates them
6 herein by reference.

7 19

8 For the period of May 13, 2009, through March 3, 2010, THOMASELLI was
9 responsible, as the designated broker/officer for HALCYON, for the supervision and control of
10 the activities conducted on behalf of the corporation by its officers and employees.

11 THOMASELLI failed to exercise reasonable supervision and control over the property mortgage
12 loan brokering activities of HALCYON. In particular, THOMASELLI permitted, ratified
13 and/or caused the conduct described in the First and Second Causes of Action, above, to occur,
14 and failed to take reasonable steps, including, but not limited to, the handling of trust funds,
15 supervision of employees and the implementation of policies, rules, procedures and systems to
16 ensure the compliance of the corporation with the Real Estate Law and the Regulations.

17 20

18 The acts and/or omissions of THOMASELLI set forth in Paragraph 19, above,
19 violate Section 10159.2 of the Code and Section 2725 of the Regulations, and constitute grounds
20 for disciplinary action under Section 10177(h) of the Code.

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and license rights of Respondents under the Code, and for such other
4 and further relief as may be proper under the provisions of law.
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8 _____
 JOSEPH AIU
 Deputy Real Estate Commissioner

9 Dated at San Diego, California,
10 this 8 day of November, 2010.
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