Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013

FILED
AUG - 7 2007
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of CARLOS FREDERICO GUZMAN, Respondent.	NO. H-32732 LA L-2006 100 109 STIPULATION AND AGREEMENT AND DECISION AFTER REJECTION

I, CARLOS FREDERICO GUZMAN, Respondent herein, acknowledge that I have received and read the Accusation filed by the Department of Real Estate on April 26, 2006, and the Statement to Respondent sent to me in connection with the Accusation.

I hereby admit that the allegations contained in paragraphs II through VII of the Accusation filed against me are true and correct and constitute a basis for the discipline of my real estate broker license.

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I further acknowledge that the Real Estate Commissioner held a hearing on this Accusation on February 21, 2007, before the Office of Administrative Hearings for the purpose of proving the allegations therein. I was present at the hearing and participated therein. Further, I have had an opportunity to read and review the Proposed Decision of the Administrative Law Judge.

I understand that pursuant to Government Code Section 11517(c), the Real Estate Commissioner has rejected the Proposed Decision of the Administrative Law Judge. I further understand that pursuant to the same Section 11517(c), the Real Estate Commissioner may decide this case upon the record, including the transcript, without taking any additional evidence, after affording me the opportunity to present written argument to the Real Estate Commissioner.

I hereby request that the Real Estate Commissioner in his discretion revoke my real estate broker license and issue to me a restricted real estate salesperson license under the authority of Section 10156.5 of the Business and Professions Code if I make application therefor and pay to the Department of Real Estate the appropriate fee for said license within 90 days from the effective date of the Decision herein.

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I further understand that the restricted license shall be subject to the provisions of Section 10156.7 of the Business and Professions Code and the following conditions, limitations and restrictions will attach to the restricted license issued by the Department of Real Estate pursuant hereto:

1. The restricted license issued to Respondent,

(a) may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction (including a plea of nolo contendere) to a crime which is substantially related to Respondent's qualifications, fitness or capacity as a real estate licensee;

(b) may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or the conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years has elapsed from the effective date of this Decision.

3. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing real estate broker on a form RE 552 approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Accusation, and this Stipulation which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: 7.25.07

CARLOS FREDERICO GUZMAN
Respondent

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I have read the Accusation filed herein, the Proposed Decision of the Administrative Law Judge dated March 23, 2007, and the foregoing Stipulation signed by Respondent. I am satisfied that it will not be inimical to the public interest to issue a restricted salesperson license to Respondent.

Therefore, IT IS HEREBY ORDERED that the real estate broker license of Respondent be revoked and a restricted real estate salesperson license be issued to Respondent if Respondent has otherwise fulfilled all of the statutory requirements for licensure. The restricted license shall be limited, conditioned and restricted as specified in the foregoing Stipulation and Waiver.

This Order shall become effective on August 27, 2007.

IT IS SO ORDERED August 2, 2007.

JEFF DAVI
Real Estate Commissioner

BY: John R. Liberator
Chief Deputy Commissioner

SAMO. Fleg

FILED
MAY - 1 2007
DEPARTMENT OF REAL ESTATE
By [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of CARLOS FREDERICO GUZMAN, Respondent.	No. H-32732 LA L-2006100109

NOTICE

TO: CARLOS FREDERICO GUZMAN, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 23, 2007, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 23, 2007, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on February 21, 2007, and any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of February 21, 2007, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondent at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: 4-27-07

JEFF DAVI
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:	Case No. H-32732 LA
CARLOS FREDERICO GUZMAN,	OAH No. L2006100109
Respondents.	

PROPOSED DECISION

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on February 21, 2007.

James R. Peel, Counsel for the California Department of Real Estate (Department), represented Janice A. Waddell (Complainant).

Carlos Frederico Guzman (Respondent) was present and participated in these proceedings without the assistance of legal counsel.

Oral and documentary evidence was received, and the matter was deemed submitted for decision on February 21, 2007.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity as a Deputy Real Estate Commissioner on April 26, 2006. After Respondent failed to file a notice of defense, the Department entered his default in June 2006; however, Respondent later filed a notice of defense, upon which the Department set aside the default and set the matter for hearing.

2a. Respondent is presently licensed as a real estate broker, license number 00230123, issued by the Department under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).[1] At all relevant time periods herein, Respondent engaged in licensed broker activities under the fictitious business names All Queen Realty; Carlos Guzman and Associates; Casa Blanca Realty Services; C R Homes Real Estate Professionals; Express Realty Services; Hispano Realty; Northside Lending; Premium Realty & Investments; and Sonora Realty. Respondent broker's license will expire on November 16, 2009, unless renewed.

[1] All statutory references herein are to the Business and Professions Code unless indicated otherwise.

2b. At all relevant times herein, Ameriprop Enterprises, Inc. (AEI) was a corporation licensed as a real estate broker under the Real Estate Law. Respondent was the designated officer of AEI. William Barahona was President and 100 percent owner of AEI. Neither Barahona, nor any of AEI's employees, held any real estate licenses.

3. At all relevant times herein, Respondent engaged in the real estate brokerage business, including negotiating loans on real property. In connection with his real estate brokerage activities, Respondent accepted and received funds, including funds in trust, from or on behalf of principals, and thereafter made deposits or disbursements of these trust funds. Respondent did not maintain a broker's trust account. Rather, appraisals and credit report fees were paid through escrow or directly by the borrowers.

4. Between December 29, 2003, and March 9, 2004, the Department conducted two audits of Respondent's books and records covering the period February 1, 2002, through January 31, 2004 (the Guzman audits). The first of these audits focused on Respondent's mortgage loan broker activity; the other focused on Respondent's sales activity. A third audit was conducted of AEI's books and records for the period April 29, 2002, to April 30, 2004. The AEI audit was limited to AEI's mortgage loan broker activity.

5. The Guzman audits revealed, for the audit period, the following:

a. Respondent's records of earnest money deposits (EMDs or trust funds) received and forwarded were not complete, e.g., the date a deposit was forwarded was not always recorded, and the records of deposits were not maintained in chronological sequence;

b. Respondent held earnest money deposits beyond the next three business days after offers were accepted without written authorization from the principals;

c. Respondent's salespersons falsely stated to sellers that Respondent held the earnest money deposit when Respondent had not yet received the deposit;

d. Respondent failed to maintain broker-salesperson agreements with each salesperson Respondent employed;

e. Respondent failed to maintain the license certificates for each salesperson Respondent employed;

f. Respondent used unlicensed fictitious business names in Respondent's brokerage business, including C R Homes R.E.; C R Homes Real Estate; Premium Realty; Premium Realty & Associates; Carlos Guzman & Angels; and C G A Realty;

g. Respondent operated a branch office located at 1623 North D Street, San Bernardino, California, without having first obtained a license for that location;

h. Respondent failed to notify the Department that he no longer maintained branch offices located in Burbank, Colton, Fontana, and San Bernardino;

i. Respondent failed to establish, maintain and enforce policies to ensure that the records of earnest money deposits received and forwarded were complete; and

j. On three occasions in 2003, Respondent failed to retain on file a copy of each Mortgage Loan Disclosure Statements (MLDSs) signed by the borrowers or their agents.

6. The AEI audit revealed that William Barahona, an employee acting on behalf of AEI, solicited and negotiated a loan on real property while he was unlicensed.

7. Respondent was first licensed as a real estate salesperson in 1961. He has been licensed as a real estate broker since 1973. At the time of the audits, the Department's licensing records showed that Respondent was supervising eight branch offices, operating under seven fictitious business names, employing eight licensed salespersons, and acting as the designated officer of one corporate licensee, AEI. As of January 10, 2007, the Department's licensing records showed that Respondent had a net increase in these numbers, to 12 branch offices, eight fictitious business names, 16 salespersons, and an additional corporate licensee operating under his broker's license. Respondent, on the other hand, testified at the administrative hearing that he currently maintains only six branch offices under his license, and is the designated broker for AEI. Thus, unless Respondent failed to report closures of branch offices or terminations of employees, his responsibilities for overseeing far-flung offices and persons apparently did not decrease after the 2004 audits.

8. Respondent admitted that each branch office has been run independently by individuals who are like "owners/managers."[2] In general, Respondent is paid either a 10 percent commission for each "closed transaction" or a monthly salary, although it was not clear that he had been receiving any compensation. Respondent was not specific regarding how he generally dealt with any problems in the branch offices. It should be noted that Respondent was not available to meet face-to-face with the Department's auditor for an "exit conference" at the conclusion of the audits in 2004, to discuss the auditor's findings; nor did he respond to the auditor's multiple requests for certain documents or files during the audits.

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[2] Respondent also told the Department's auditor that individuals, both licensed and unlicensed, "owned" several of the branch offices. In other words, Respondent's branch offices were not separate business organizations; yet, these businesses apparently were not "owned" by Respondent, either. The nature of the relationship between Respondent and these owners/managers seems to obfuscate the legal requirements for branch office licensure.

9. Respondent did not dispute the auditor's findings. He characterized the auditor's finding that he had held trust funds for longer than three business days as follows: a buyer might have postdated a check, or the buyer might have asked that a check be held and not forwarded for deposit until the buyer's next payday, in order that there would be sufficient funds in the buyer's bank account when the check had cleared. He did not believe that holding the buyers' checks was a major problem, but nevertheless, he said that this problem had been corrected; "we've given guidelines to everybody about what to do."

10. Following the audits, Respondent instituted an office policy, or "guidelines," to ensure the proper handling of trust funds and trust records, and to prohibit misrepresentations to sellers concerning EMDs. He did not offer documentary evidence of any guidelines. He said he has obtained broker-salespersons agreements with each of his employees, and he has "located" the salespersons' license certificates. He tries to visit one or two offices each day to "look over documents." He believed he corrected the problems and that his businesses are now "in compliance," but he did not offer any documentary evidence to support his testimony.

11. Respondent's demeanor in his testimony was matter of fact. With regard to Barahona signing a borrower's loan application while unlicensed, Respondent said, "I'm going to tell him he can't do that." Respondent's demonstrated failure to supervise his many branch offices and related businesses, and to respond promptly to the Department's concerns during the audit, along with the apparently tenuous relationship between these various businesses and Respondent's oversight responsibilities as broker, suggest that Respondent's uncorroborated testimony that problems have been fixed should not be afforded great weight

LEGAL CONCLUSIONS

1. Respondent has violated the following provisions of the Real Estate Law:

a. Section 10145 and California Code of Regulations, title 10, (CCR) section 2831, by failing to maintain complete trust fund records (factual finding number 5a);

b. CCR section 2832, by holding earnest money deposits beyond three business days after an offer was accepted (factual finding number 5b);

c. Section 10176, subdivision (a), by falsely stating to sellers that Respondent held the buyers' earnest money deposits (factual finding number 5d);

d. CCR section 2726, by failing to maintain a broker-salesperson agreement with each salesperson Respondent employed (factual finding number 5d);

e. Section 10160, by not maintaining the license certificate for each salesperson Respondent employed (factual finding number 5e);

f. CCR section 2731, by using unlicensed fictitious business names in his brokerage business (factual finding number 5f);

g. Section 10163 and CCR section 2715, by maintaining a branch office without a license for that location (factual finding number 5g);

h. Section 10163 and CCR section 2715, for failure to notify the Department of the closing of four branch offices (factual finding number 5h);

i. CCR section 2725, by failing to maintain and enforce policies to ensure that trust records were complete (factual finding number 5i);

j. Section 10240, by failing on three occasions to maintain signed copies of each Mortgage Loan Disclosure Statement (factual finding number 5j); and

k. Section 10137, by employing an unlicensed person to solicit and negotiate a loan on real property (factual finding number 6).

2. Cause exists to revoke or suspend Respondent's real estate brokers' license under section 10137, for employing an unlicensed person, William Barahona, to solicit and negotiate a loan on real property, as set forth in factual finding number 6 and legal conclusion number 1k.

3. Cause exists to revoke or suspend Respondent's real estate broker's license under section 10176, subdivision (a), because Respondent, through his agents, has misrepresented to sellers that Respondent held buyers' earnest money deposits, as set forth in factual finding number 5d and legal conclusion number 1d.

4. Cause exists to revoke or suspend Respondent's real estate broker's license under section 10177, subdivision (d), because Respondent has willfully disregarded and violated provisions of the Real Estate Law and the rules and regulations promulgated thereunder, as set forth in factual finding numbers 5 and 6, and legal conclusion number 1.

5. Cause exists to revoke or suspend Respondent's real estate broker's license under section 10177, subdivision (g), for Respondent's negligent supervision of the activities of his employees and, as the designated officer of Ameriprop Enterprises, Inc., his failure to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required, as set forth in factual finding numbers 5 through 9.[3]

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[3] Section 10159.2 provides that the "officer designated by a corporate broker licensee . . . shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division."

6. Cause does not exist to revoke or suspend Respondent's real estate broker's license under section 10177, subdivision (i), for fraud or dishonest dealing. The evidence at hearing did not establish this ground.

7. Respondent has committed violations of the Real Estate Law that are serious and have real consequences. These include allowing salespersons to misrepresent to sellers that the broker was holding the buyers' earnest money deposits, allowing buyers to postdate checks for their earnest money deposits, and allowing an unlicensed person, William Barahona, to negotiate a loan on real property, an act for which a real estate license is required. Some violations, such as the failure to maintain signed MLDSs in each file, may be less serious. Respondent, however, offered no substantial evidence in mitigation or explanation for these violations. His misconduct appears to be the result of his inattentiveness to his broker responsibilities, or possibly, his lack of authority or control regarding the various businesses operating under his license.

8. Even if Respondent has formulated an office policy, and has told his agents how to handle these matters in the future, Respondent failed to demonstrate, through his testimony or otherwise, that he has provided, or will be able to provide in the future, reasonable supervision of his employees or their activities at these branch offices. On the contrary, Respondent continues to delegate substantial independence to his branch offices. While there was no evidence that Respondent attempted to defraud any clients, it is clear that his capacity to perform necessary oversight of licensed activities is diminished. The public safety requires that Respondent be prevented from conducting real estate brokerage business activities in this manner; however, he will be permitted to continue to transact real estate under a restricted real estate salesperson's license.

ORDER

Not adopted

All licenses and licensing rights of Respondent, Carlos Frederico Guzman, under the Real Estate Law are revoked; however, a restricted real estate salesperson's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner (Commissioner) in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands

Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.

Not adopted

4. Respondent shall immediately notify any branch office employee, or any employee of any entity or business related to Respondent's broker's license, of the Commissioner's Decision in this matter. Respondent shall provide notice of this Decision in any other manner which is reasonable and as may be required by the Commissioner.

5. Respondent shall, within 18 months from the effective date of this Decision, present evidence satisfactory to the Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: March 23, 2007

Mark E. Harman

MARK E. HARMAN
Administrative Law Judge
Office of Administrative Hearings

SACTO Flag

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FILED
APR 26 2006
DEPARTMENT OF REAL ESTATE
By [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of CARLOS FREDERICO GUZMAN, Respondent,	No. H-32732 LA A C C U S A T I O N

The Complainant, Janice A. Waddell, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against CARLOS FREDERICO GUZMAN, alleges as follows:

I

The Complainant, Janice A. Waddell, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against CARLOS FREDERICO GUZMAN.

II

CARLOS FREDERICO GUZMAN (hereinafter referred to as "Respondent"), is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter Code).

III

At all times herein mentioned, Respondent CARLOS FREDERICO GUZMAN, was licensed as a real estate broker.

IV

At all times material herein, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Sections 10131(a) and (d) of the Code and the exception set forth in Financial Code Section 17004(a)(4).

V

On or about March 9, 2004, the Department completed an examination of Respondent's books and records, pertaining to the activities described in Paragraph IV above, covering a period from February 1, 2002, through January 31, 2004, which examination revealed violations of the Code and of Title 10, Chapter 6, California Code of Regulations (hereinafter Regulations) as set forth below.

VI

The examination described in Paragraph V, above, determined that, in connection with the activities described in Paragraph IV above, Respondent accepted or received funds, including funds in trust (hereinafter "trust funds") from or on behalf of principals, and thereafter made deposit or disbursement of such funds.

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VII

In the course of activities described in Paragraphs IV through VI and during the examination period described in Paragraph V, Respondent acted in violation of the Code and the Regulations as follows, and as more specifically set forth in Audit Report Nos. LA 030337 and LA 030226 and related exhibits:

(1) Violated Section 10145(a) of the Code and Regulation 2831 in that trust fund records maintained for earnest money deposits received and forwarded were not always complete. The date the deposit was forwarded was not always recorded in the records maintained in chronological sequence.

(2) Violated Regulation 2832 in that earnest money deposits were held beyond the next three business days after the offer was accepted without written authorization.

(3) Violated Section 10176(a) of the Code by falsely representing to sellers that Respondent held the earnest money deposit when Respondent had not yet received the deposit.

(4) Violated Regulation 2726 by not maintaining a broker-salesperson agreement with each salesperson.

(5) Violated Section 10160 of the Code and Regulation 2753 by not maintaining the license certificate for each salesperson.

(6) Violated Regulation 2731 by using unlicensed fictitious business names in Respondent's brokerage business.

(7) Violated Section 10163 of the Code and Regulation 2715 by maintaining a branch office at 1623 N. D Street, San Bernardino, without a branch office license for that location.

Respondent failed to notify the Department within the next business day of the closing of branch offices in Burbank, Colton, Fontana, and San Bernardino.

(8) Violated Regulation 2725 by failing to maintain a written policy to ensure that the records of earnest money deposits received and forwarded were complete.

(9) Violated Section 10240 of the Code by failing to maintain a copy of each Mortgage Loan Disclosure Statement for borrowers A. Gonzalez, G. Gonzales, and Valle.

(10) Violated Section 10137 of the Code by employing William Barahona, while unlicensed, to solicit and negotiate loans on real property. Said activities require a real estate license as defined by Section 10131(d) of the Code.

VIII

On or about May 9, 2003, Respondent accepted funds from Alejandro Terraza towards the purchase of property located at 66796 Granada Ave., Desert Hot Springs, California. The amounts given to Respondent included deposit funds of $3,000, $388 for escrow fee, $350 for appraisal, $388 for an extention, and another $388 for another extention. Respondent failed to deposit the funds received from Alejandro Terraza into a real estate broker trust account. The conduct of Respondent, as alleged in Paragraph VIII, was in violation of Section 10145(a) of the Code.

IX

The conduct, acts and/or omissions of Respondent, as alleged above, subjects his real estate licenses and license

rights to suspension or revocation pursuant to Sections 10137, 10176(a), 10177(d) and/or 10177(g), and 10176(i) of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent CARLOS FREDERICO GUZMAN under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California,
this 6 day of February, 2006.

JANICE A. WADDELL
Deputy Real Estate Commissioner

cc: Carlos Frederico Guzman
Janice A. Waddell
L.A. Audit Section
Eric Goff
Sacto.