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1 Department of Real Estate
2 320 W. 4TH Street, Suite 350
3 Los Angeles, CA 90013-1105

MAY 08 2012

4 Telephone: (213) 576-6982

DEPARTMENT OF REAL ESTATE
BY: Luiz Roberto Almeida

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 CAPITAL MORTGAGE LENDING; and)
14 DONALD EDWARD STOLAN,)
15 individually and as former)
16 designated officer of Capital)
17 Mortgage Lending,)
18 Respondents,)

No. H-37087 LA
L-2011031450

STIPULATION
AND
AGREEMENT

17 It is hereby stipulated by and between Respondent
18 DONALD EDWARD STOLAN, represented by Frank M. Buda, Esq. and the
19 Complainant, acting by and through James A. Demus, Counsel for
20 the Department of Real Estate, as follows for the purpose of
21 settling and disposing of the Accusation ("Accusation") filed on
22 February 25, 2011, in this matter:

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

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

4 2. Respondent has received, read and understands the
5 Statement to Respondent, the Discovery Provisions of the APA and
6 the Accusation filed by the Department of Real Estate in this
7 proceeding.

8 3. Respondent timely filed a Notice of Defense
9 pursuant to Section 11506 of the Government Code for the purpose
10 of requesting a hearing on the allegations in the Accusation.
11 Respondent hereby freely and voluntarily withdraws said Notice of
12 Defense. Respondent acknowledges that he understands that by
13 withdrawing said Notice of Defense he thereby waives the right to
14 require the Commissioner to prove the allegations in the
15 Accusation at a contested hearing held in accordance with the
16 provisions of the APA and that he will waive other rights
17 afforded to him in connection with the hearing such as the right
18 to present evidence in his defense of the allegations in the
19 Accusation and the right to cross-examine witnesses.

21 4. This Stipulation is based on the factual
22 allegations contained in the Accusation. In the interest of
23 expedience and economy, Respondent chooses not to contest these
24 allegations, but to remain silent and understand that, as a
25 result thereof, these factual allegations, without being admitted
26 or denied, will serve as a prima facie basis for the disciplinary
27

1 action stipulated to herein. The Real Estate Commissioner shall
2 not be required to provide further evidence to prove said factual
3 allegations.

4 5. This Stipulation is made for the purpose of
5 reaching an agreed disposition of this proceeding and is
6 expressly limited to this proceeding and any other proceeding or
7 case in which the Department of Real Estate ("Department"), the
8 state or federal government, or any agency of this state, another
9 state or federal government is a party.

10 6. It is understood by the parties that the Real
11 Estate Commissioner may adopt this Stipulation as her Decision in
12 this matter thereby imposing the penalty and sanctions on
13 Respondent's real estate license and license rights as set forth
14 in the "Order" herein below. In the event that the Commissioner
15 in her discretion does not adopt the Stipulation, it shall be
16 void and of no effect and Respondent shall retain the right to a
17 hearing and proceeding on the Accusation under the provisions of
18 the APA and shall not be bound by any stipulation or waiver made
19 herein.
20

21 7. The Order or any subsequent Order of the Real
22 Estate Commissioner made pursuant to this Stipulation shall not
23 constitute an estoppel, merger or bar to any further
24 administrative or civil proceedings by the Department of Real
25 Estate with respect to any matters which were not specifically
26 alleged to be causes for Accusation in this proceeding but do
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1 constitute a bar, estoppel and merger as to any allegations
2 actually contained in the Accusation against Respondent herein.

3 8. Respondent understands that by agreeing to this
4 Stipulation, Respondent agrees to pay, pursuant to Business and
5 Professions Code Section 10148, the cost of the audits which led
6 to this disciplinary action. The cost of said audits was
7 \$8,029.50.

8 9. Respondent has received, read, and understands the
9 "Notice Concerning Costs of Subsequent Audit." Respondent
10 further understands that by agreeing to this Stipulation, the
11 findings set forth below in the Determination of Issues become
12 final, and the Commissioner may charge Respondent for the cost of
13 any subsequent audit conducted pursuant to Business and
14 Professions Code Section 10148 to determine if the violations
15 have been corrected.

16
17 DETERMINATION OF ISSUES

18 By reason of the foregoing, it is stipulated and agreed
19 that the following determination of issues shall be made:

20 The conduct of DONALD EDWARD STOLAN as described in
21 Paragraph 4 above, is a basis for discipline of Respondent's
22 license and license rights as violations of the Real Estate law
23 pursuant to Business and Professions Code ("Code") Sections
24 10165, 10177(d), 10177(g) and 10177(h).

25 ORDER

26 WHEREFORE, THE FOLLOWING ORDER is hereby made:
27

I.

1
2 All licenses and licensing rights of Respondent DONALD
3 EDWARD STOLAN under the Real Estate Law are suspended for a
4 period of sixty (60) days from the effective date of this
5 Decision; provided, however, that sixty (60) days of said
6 suspension, shall be stayed for two (2) years upon the following
7 terms and conditions:

8 1. Respondent shall obey all laws, rules and
9 regulations governing the rights, duties and responsibilities of
10 a real estate licensee in the State of California; and

11 2. That no final subsequent determination be made,
12 after hearing or upon stipulation that cause for disciplinary
13 action occurred within two (2) years of the effective date of
14 this Decision. Should such a determination be made, the
15 Commissioner may, in his discretion, vacate and set aside the
16 stay order and reimpose all or a portion of the stayed
17 suspension. Should no such determination be made, the stay
18 imposed herein shall become permanent.

20 II.

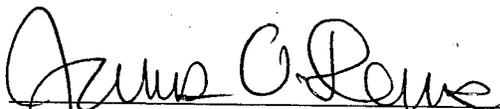
21 All licenses and licensing rights of Respondent DONALD
22 EDWARD STOLAN are indefinitely suspended unless or until
23 Respondent provides evidence satisfactory to the Real Estate
24 Commissioner of payment of restitution in the amount of \$3,995
25 to Nelson Pena.

26 ///

III.

Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and b) a subsequent audit to determine if Respondent has corrected the trust fund violations found in the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondent shall pay such costs within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in his discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment.

DATED: 11/4/11


JAMES A. DEMUS, Counsel for
the Department of Real Estate

EXECUTION OF THE STIPULATION

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I have read the Stipulation and discussed it with my counsel. 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.

Respondent can signify acceptance and approval of the terms and conditions of this stipulation by faxing a copy of its signature page, as actually signed by Respondent, to the Department at the following telephone/fax number: James A. Demus at (213) 576-6917. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of Respondent's actual signature as it appears on the Stipulation that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation.

DATED: 11/4/2011


DONALD EDWARD STOLAN Respondent

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DATED: 11-4-11

Frank M. Buda

FRANK M. BUDA
Attorney for Respondents

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondent DONALD EDWARD STOLAN and
shall become effective at 12 o'clock noon on
_____, 2011;

IT IS SO ORDERED _____, 2011.

BARBARA J. BIGBY
Acting Real Estate Commissioner

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DATED: _____

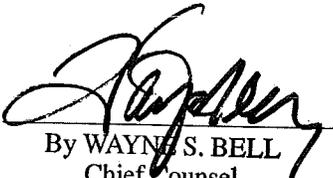
FRANK M. BUDA
Attorney for Respondents

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondent DONALD EDWARD STOLAN and
shall become effective at 12 o'clock noon on MAY 29 2012

IT IS SO ORDERED 4/22/2012

Real Estate Commissioner


By WAYNE S. BELL
Chief Counsel

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FILED

MAY 08 2012

DEPARTMENT OF REAL ESTATE
BY: Suzanne Skibinski

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-37087 LA
)	
<u>CAPITAL MORTGAGE LENDING</u> ; and,)	
DONALD EDWARD STOLAN,)	
individually and as former)	
designated officer of Capital)	
Mortgage Lending,)	
)	
Respondents.)	

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On February 25, 2011, an Accusation was filed in this matter against Respondent CAPITAL MORTGAGE LENDING.

On November 4, 2011, Respondent petitioned the Commissioner to voluntarily surrender its real estate broker license(s) pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent CAPITAL MORTGAGE LENDING's petition for voluntary surrender of its real estate broker license(s) is accepted as of the effective date of this Order as set forth below, based upon the understanding and

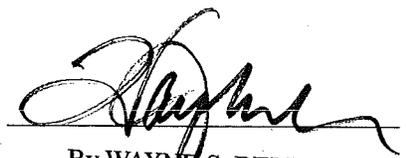
1 agreement expressed in Respondent's Declaration dated November 4,
2 2011(attached as Exhibit "A" hereto). Respondent's license
3 certificate(s), pocket card(s) and any branch office license
4 certificate(s) shall be sent to the below listed address so that
5 they reach the Department on or before the effective date of this
6 Order:

7
8 DEPARTMENT OF REAL ESTATE
9 Attn: Licensing Flag Section
10 P. O. Box 187000
11 Sacramento, CA 95818-7000

12 This Order shall become effective at 12 o'clock noon
13 on MAY 29 2012

14 DATED: 4/22/2012

15 Real Estate Commissioner

16 
17 By WAYNE S. BELL
18 Chief Counsel

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	No. H-37087 LA
<u>CAPITAL MORTGAGE LENDING</u> ; and)	L-2011031450
DONALD EDWARD STOLAN,)	
individually, and as former)	
designated officer of Capital)	
Mortgage Lending,)	
)	
Respondents,)	

DECLARATION

My name is Donald Edward Stolan and I am authorized and empowered to sign this declaration on behalf of CAPITAL MORTGAGE LENDING.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code) CAPITAL MORTGAGE LENDING wishes to voluntarily surrender its real estate license issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

1 I understand that CAPITAL MORTGAGE LENDING, by so
2 voluntarily surrendering its license, can only have it reinstated
3 in accordance with the provisions of Section 11522 of the
4 Government Code. I also understand that by so voluntarily
5 surrendering its license, CAPITAL MORTGAGE LENDING agrees to the
6 following:

7 The filing of this Declaration shall be deemed as its
8 petition for voluntary surrender. It shall also be deemed to be
9 an understanding and agreement by CAPITAL MORTGAGE LENDING that
10 it waives all rights it has to require the Commissioner to prove
11 the allegations contained in the Accusation filed in this matter
12 at a hearing held in accordance with the provisions of the
13 Administrative Procedure Act (Government Code Sections 11400 et
14 seq.), and that it also waives other rights afforded to it in
15 connection with the hearing such as the right to discovery, the
16 right to present evidence in defense of the allegations in the
17 Accusation and the right to cross-examine witnesses. I further
18 agree on behalf of CAPITAL MORTGAGE LENDING that upon acceptance
19 by the Commissioner, as evidenced by an appropriate order, all
20 affidavits and all relevant evidence obtained by the Department
21 in this matter prior to the Commissioner's acceptance, and all
22 allegations contained in the Accusation filed in the Department
23 Case No. H-37087 LA, may be considered by the Department to be
24 true and correct for the purpose of deciding whether or not to
25 grant reinstatement of CAPITAL MORTGAGE LENDING's license
26 pursuant to Government Code Section 11522.

11/04/2011 PRI 9:44 FAX Frank Buda

2012/012

1 I agree to pay the Commissioner's reasonable cost for
 2 the audit which led to this action. In calculating the amount of
 3 the Commissioner's reasonable cost, the Commissioner may use the
 4 estimated average hourly salary for all persons performing audits
 5 of real estate brokers, and shall include an allocation for
 6 travel time to and from the auditor's place of work. I will pay
 7 such cost within 60 days of receiving an invoice from the
 8 Commissioner detailing the activities performed during the audit
 9 and the amount of time spent performing those activities.

10 I am aware that if I petition for reinstatement in the
 11 future, that payment of the audit costs will be a condition of
 12 reinstatement.

13 I declare under penalty of perjury under the laws of
 14 the State of California that the above is true and correct and
 15 that I am acting freely and voluntarily on behalf of CAPITAL
 16 MORTGAGE LENDING to surrender its license and all license rights
 17 attached thereto.

18 11/4/2011 NEWPORT BEACH, CA
 19 Date and Place


 CAPITAL MORTGAGE LENDING by
 DONALD EDWARD STOLAN

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1 I agree to pay the Commissioner's reasonable cost for
2 the audit which led to this action. In calculating the amount of
3 the Commissioner's reasonable cost, the Commissioner may use the
4 estimated average hourly salary for all persons performing audits
5 of real estate brokers, and shall include an allocation for
6 travel time to and from the auditor's place of work. I will pay
7 such cost within 60 days of receiving an invoice from the
8 Commissioner detailing the activities performed during the audit
9 and the amount of time spent performing those activities.

10 I am aware that if I petition for reinstatement in the
11 future, that payment of the audit costs will be a condition of
12 reinstatement.

13 I declare under penalty of perjury under the laws of
14 the State of California that the above is true and correct and
15 that I am acting freely and voluntarily on behalf of CAPITAL
16 MORTGAGE LENDING to surrender its license and all license rights
17 attached thereto.

18
19 _____
Date and Place

CAPITAL MORTGAGE LENDING by
DONALD EDWARD STOLAN

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FILED

FEB 25 2011

JAMES DEMUS, Counsel (SBN 225005)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

DEPARTMENT OF REAL ESTATE
BY: *James B. Demus*

Telephone: (213) 576-6982
(Direct) (213) 576-6910

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
)
 CAPITAL MORTGAGE LENDING and)
)
 DONALD EDWARD STOLAN, individually)
)
 and as former designated officer)
)
 of Capital Mortgage Lending,)
)
 Respondents.)

No. H-37087-LA

A C C U S A T I O N

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, for cause of Accusation
against CAPITAL MORTGAGE LENDING and DONALD EDWARD STOLAN,
individually and as former designated officer of Capital Mortgage
Lending, alleges as follows:

1.

The Complainant, Maria Suarez, acting in her official
capacity as a Deputy Real Estate Commissioner of the State of
California, makes this Accusation against CAPITAL MORTGAGE
LENDING and DONALD EDWARD STOLAN.

///

1 2.

2 All references to the "Code" are to the California
3 Business and Professions Code and all references to "Regulations"
4 are to Title 10, Chapter 6, California Code of Regulations.

5 LICENSE HISTORY

6 3.

7 A. CAPITAL MORTGAGE LENDING ("CAPITAL") is presently
8 licensed and/or has license rights issued by the Department of
9 Real Estate ("Department") as a corporate real estate broker.
10 CAPITAL was originally licensed as a corporate real estate broker
11 on April 14, 2009.

12 B. At all times mentioned, DONALD EDWARD STOLAN
13 ("STOLAN") was licensed and/or had license rights issued by the
14 Department as a real estate broker. STOLAN was originally
15 licensed as a real estate broker on February 14, 2006.

16 C. From April 14, 2009, through July 16, 2010, CAPITAL
17 was licensed by the Department as a corporate real estate broker
18 by and through STOLAN, as the designated officer and broker
19 responsible, pursuant to Code Section 10159.2 for supervising the
20 activities requiring a real estate license conducted on behalf of
21 CAPITAL or by CAPITAL's officers, agents and employees, including
22 STOLAN.

23 BROKERAGE

24 CAPITAL MORTGAGE LENDING

25 4.

26 At all times mentioned, in the City of Irvine, County
27 of Orange, CAPITAL and STOLAN acted as real estate brokers

1 conducting licensed activities within the meaning of Code Section
2 10131(d): soliciting borrowers, or negotiating loans, or
3 performing services for borrowers in connection with loans
4 secured by liens on real property.

5 AUDITS

6 CAPITAL MORTGAGE LENDING

7 5.

8 On September 3, 2010, the Department completed audit
9 examinations of the books and records of CAPITAL pertaining to
10 the activities described in Paragraph 4 which require a real
11 estate license. The audit examinations covered a period of time
12 from June 1, 2008 to May 28, 2010. The audit examinations
13 revealed violations of the Code and the Regulations as set forth
14 in the following paragraphs, and as more fully discussed in Audit
15 Reports LA 090258 and LA 100026 and the exhibits and workpapers
16 attached to said audit reports.

17 VIOLATIONS OF THE REAL ESTATE LAW

18 6.

19 In the course of activities described in Paragraph 4
20 above and during the examination period described in Paragraph 5,
21 Respondents CAPITAL and STOLAN acted in violation of the Code and
22 the Regulations in that:

23 (a) Respondents solicited borrowers and collected
24 advance fees from borrowers for loan modification transactions,
25 without submitting an advance fee agreement for review by the
26 Commissioner, in violation of Code Section 10085 and Regulation
27 2970.

1 (b) Respondents collected advance fees from borrower
2 Nelson Pena, in connection with a loan modification transaction,
3 without placing the advance fees into a trust account, in
4 violation of Code Sections 10145 and 10146.

5 (c) CAPITAL solicited and collected advance fees from
6 borrowers in June and July 2008, before obtaining a real estate
7 broker license from the Department, in violation of Code Section
8 10130.

9 (d) Respondents did not retain all documents regarding
10 loan modifications and advance fee deposits for examination by
11 the Department, in violation of Code Section 10148.

12 (e) CAPITAL used the unlicensed fictitious business
13 name "Capital Mortgage" in mortgage loan transactions, in
14 violation of Code Section 10159.5 and Regulation 2731.

15 (f) CAPITAL maintained more than one place of
16 business, without first obtaining a branch office license from
17 the Department, in violation of Code Section 10163 and Regulation
18 2715.

19 (g) Respondents did not retain copies of Department
20 approved Mortgage Loan Disclosure Statements ("MLDS") signed by
21 borrowers and brokers, to show the MLDS were provided to
22 borrowers within three business days after the borrowers signed
23 their loan applications, in violation of Code Section 10240 and
24 Regulation 2840.

25 (h) Respondents did not notify the Department of the
26 employment of salespersons Angela Gibbs and Sheryl Deluca, in
27 violation of Code Section 10161.8 and Regulation 2752.

1 (i) When CAPITAL performed escrow services, CAPITAL
2 did not disclose within the escrow instructions STOLAN's
3 interests as stockholder, officer and owner, in violation of Code
4 Section 10176(g) and Regulation 2950(h).

5 (j) CAPITAL did not have borrowers Nancy & Thai Vu and
6 Edward & Tracy Stewart sign amended escrow instructions, in
7 violation of Regulation 2950(b).

8 7.

9 The conduct of Respondents CAPITAL and STOLAN,
10 described in Paragraph 6, above, violated the Code and the
11 Regulations as set forth below:

12	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
13		
14	6(a)	Code Section 10085 and Regulation
15		2970
16		
17	6(b)	Code Sections 10145 and 10146
18		
19	6(c)	Code Section 10130
20		
21	6(d)	Code Section 10148
22		
23	6(e)	Code Section 10159.5 and Regulation
24		2731
25		
26	6(f)	Code Section 10163 and Regulation
27		2715

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6(g)

6(h)

6(i)

6(j)

Code Section 10240 and Regulation
2840

Code Section 10161.8 and Regulation
2752

Code Section 10176(g) and
Regulation 2950(h)

Regulation 2950(b)

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of CAPITAL and STOLAN, under the provisions of Code Sections 10165, 10176(g), 10177(d) and/or 10177(g).

NEGLIGENCE

8.

The overall conduct of Respondents CAPITAL and STOLAN constitutes negligence or incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of said Respondents pursuant to Code Section 10177(g).

SUPERVISION AND COMPLIANCE

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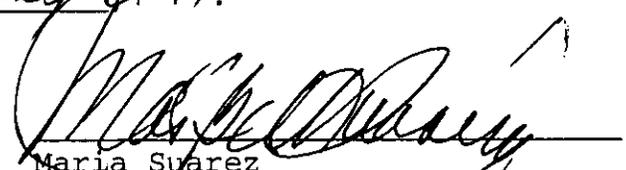
The overall conduct of Respondent STOLAN constituted a failure on his part, as a former officer designated by a corporate broker licensee, to exercise reasonable supervision and

1 control over the licensed activities of CAPITAL as required by
2 Code Section 10159.2, and to keep CAPITAL in compliance with the
3 Real Estate Law, and is cause for the suspension or revocation of
4 the real estate license and license rights of STOLAN pursuant to
5 the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

6 WHEREFORE, Complainant prays that a hearing be
7 conducted on the allegations of this Accusation and that upon
8 proof thereof, a decision be rendered imposing disciplinary
9 action against the license and license rights of Respondents
10 CAPITAL MORTGAGE LENDING and DONALD EDWARD STOLAN, individually
11 and as former designated officer of Capital Mortgage Lending,
12 under the Real Estate Law (Part 1 of Division 4 of the Business
13 and Professions Code) and for such other and further relief as
14 may be proper under other applicable provisions of law.

15 Dated at Los Angeles, California

16
17 this 5th day of January 2011.

18
19 
20 Maria Suarez
21 Deputy Real Estate Commissioner

22
23 cc: CAPITAL MORTGAGE LENDING
24 DONALD EDWARD STOLAN
25 Maria Suarez
26 Sacto
27 Audits