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

Telephone: (213) 576-6982

FILED

OCT 25 2011

DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of UNITED CAPITAL MORTGAGE PLANNERS INC.; and JOSHUA LESLIE CHIRCHICK, as designated officer of United Capital Mortgage Planners Inc., Respondents.	No. H-37141 LA STIPULATION AND AGREEMENT

It is hereby stipulated by and between Respondents UNITED CAPITAL MORTGAGE PLANNERS INC. and JOSHUA LESLIE CHIRCHICK, as designated officer of United Capital Mortgage Planners Inc., (sometimes collectively referred to as "Respondents"), and the Complainant, acting by and through Elliott Mac Lennan, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation ("Accusation") filed on March 16, 2011, in this matter:

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1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement ("Stipulation").

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

3. Respondents timely filed a Notice of Defense pursuant to Section 11506 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents acknowledge that they understand that by withdrawing said Notice of Defense they thereby waive their right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that they will waive other rights afforded to them in connection with the hearing such as the right to present evidence in their defense and the right to cross-examine witnesses.

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4. This Stipulation is based on the factual allegations contained in the Accusation. In the interest of expedience and economy, Respondents choose not to contest these allegations, but to remain silent and understand that, as a result thereof, these factual allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. The Real Estate Commissioner shall not be required to provide further evidence to prove said factual allegations.

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

6. It is understood by the parties that the Real Estate Commissioner may adopt this Stipulation as his Decision in this matter thereby imposing the penalty and sanctions on Respondents' real estate licenses and license rights as set forth in the "Order" herein below. In the event that the Commissioner in his discretion does not adopt the Stipulation, it shall be void and of no effect and Respondents shall retain the right to a hearing and proceeding on the Accusation under the provisions of the APA and shall not be bound by any stipulation or waiver made herein.

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

8. Respondents understand that by agreeing to this Stipulation, Respondents agree to pay, pursuant to Business and Professions Code Section 10148, the cost of the audit. The amount of said cost for the audit is $2,427.50.

9. Respondents have received, read, and understand the "Notice Concerning Costs of Subsequent Audit". Respondents further understand that by agreeing to this Stipulation, the findings set forth below in the Determination of Issues become final, and the Commissioner may charge Respondents for the cost of any subsequent audit conducted pursuant to Business and Professions Code Section 10148 to determine if the violations have been corrected. The maximum cost of the subsequent audit will not exceed $2,427.50.

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DETERMINATION OF ISSUES

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

I.

The conduct, acts or omissions of UNITED CAPITAL MORTGAGE PLANNERS INC. and JOSHUA LESLIE CHIRCHICK, as described in Paragraph 4, above, are in violation of Sections 10085, 10137, 10145, 10146 and 10240 and of the Business and Professions Code ("Code") and Sections 2840, 2970 and 2972 of Title 10, Chapter 6 of the California Code of Regulations ("Regulations") and is a basis for discipline of Respondents' license and license rights as violation of the Real Estate Law pursuant to Code Sections 10177(d) and 10177(g).

II.

The conduct, acts or omissions of JOSHUA LESLIE CHIRCHICK, as described in Paragraph 4, above, are in violation of Code Section 10159.2 and is a basis for discipline of Respondent's license and license rights as violation of the Real Estate Law pursuant to Code Section 10177(h), 10177(g) and 10177(d).

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

The real estate broker license and license rights of Respondent UNITED CAPITAL MORTGAGE PLANNERS INC. under the Real Estate Law are revoked.

II.

The real estate broker license of Respondent JOSHUA LESLIE CHIRCHICK under the Real Estate Law is revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent, pursuant to Section 10156.5 of the Business and Professions Code, if Respondent:

A. Makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision.

B. Respondent shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the

effective date of the Decision in this matter.

The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code.

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate 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 the 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 two (2) years has elapsed from the effective date of the issuance of the restricted license.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by

the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent JOSHUA LESLIE CHIRCHICK 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.

6. Respondent JOSHUA LESLIE CHIRCHICK shall within six (6) months from the effective date of the Decision herein, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license

until Respondent passes the examination.

III.

Pursuant to Section 10148 of the Business and Professions Code, Respondents UNITED CAPITAL MORTGAGE PLANNERS INC. and JOSHUA LESLIE CHIRCHICK 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 Respondents are now in compliance with the Real Estate Law. The cost of the audit which led to this disciplinary action is 2,427.50. 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 time to and from the auditor's place of work. Said amount for the prior and subsequent audits shall not exceed $4,855.00. Respondents shall pay such cost 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 suspend the license of Respondents pending a hearing held in accordance with Section 11500, et seq., of the Government Code, 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 suspension shall remain in effect until payment is made in full or until Respondents enter into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

DATED: 7-28-11

ELLIOTT MAC LENNAN, Counsel for the Department of Real Estate

* * *

EXECUTION OF THE STIPULATION

We have read the Stipulation and Agreement. Its terms are understood by us and are agreeable and acceptable to us. We understand that we are waiving rights given to us by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and we 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 we would have the right to cross-examine witnesses against us and to present evidence in defense and mitigation of the charges.

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MAILING AND FACSIMILE

Respondents (1) shall mail the original signed signature page of the stipulation herein to Elliott Mac Lennan: Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Suite 350, Los Angeles, California 90013-1105. Respondents shall also (2) facsimile a copy of signed signature page, to the Department at the following telephone/fax number: (213) 576-6917, Attention: Elliott Mac Lennan.

A facsimile constitutes acceptance and approval of the terms and conditions of this stipulation. Respondents agree, acknowledge and understand that by electronically sending to the Department a facsimile copy of Respondents' actual signature as it appears on the stipulation that receipt of the facsimile copy by the Department shall be as binding on Respondents as if the Department had received the original signed stipulation.

DATED: 8/8/2011

UNITED CAPITAL MORTGAGE PLANNERS INC., Respondent
By: JOSHUA LESLIE CHIRCHICK, as designated officer of UNITED CAPITAL MORTGAGE PLANNERS INC.

DATED: 8/8/2011

JOSHUA LESLIE CHIRCHICK, as designated officer of UNITED CAPITAL MORTGAGE PLANNERS INC. Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondents UNITED CAPITAL MORTGAGE PLANNERS INC. and JOSHUA LESLIE CHIRCHICK and shall become effective at 12 o'clock noon on November 23, 2011.

IT IS SO ORDERED 9/28, 2011.

BARBARA J. BIGBY
Acting Real Estate Commissioner

Sacto

FILED

MAR 16 2011

DEPARTMENT OF REAL ESTATE
BY: _____

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of UNITED CAPITAL MORTGAGE PLANNERS INC.; and JOSHUA LESLIE CHIRCHICK, as designated officer of United Capital Mortgage Planners Inc., Respondents.	No. H- 37141 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 UNITED CAPITAL MORTGAGE PLANNERS INC. and JOSHUA LESLIE CHIRCHICK, as designated officer of United Capital Mortgage Planners Inc., 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.

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2.

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

License Status

3.

A. At all times mentioned, UCMPI was licensed or had license rights issued by the Department of Real Estate (Department) as a corporate real estate broker by and through real estate broker JOSHUA LESLIE CHIRCHICK (CHIRCHICK). UCMPI was originally licensed as a corporate real estate broker on September 15, 2006, by and through CHIRCHICK as designated officer. CHIRCHICK was licensed as a real estate broker on August 14, 2006 and has been the designated officer of UCMPI since its inception. On September 15, 2010, UCMPI's corporate broker license expired.

B. MACH Mortgage Consulting Inc. aka MACH Mortgage Consulting LLC (MACH) is an unlicensed Limited Liability Company owned and operated by real estate broker Michael Donald Maher. United Capital Mortgage Planners was MACH's fictitious name since October 5, 2005. At different time CHIRCHICK and Michael Donald Maher have shared ownership of MACH and UCMPI.

C. Michael Spencer Borghetti (Borghetti) was originally licensed on September 20, 2006 as a conditional real estate salesperson. On May 14, 2008, Borghetti was licensed as a salesperson. On September 20, 2010, said license expired.

Borghetti retains a right to renew his salesperson license within two years of expiration pursuant to Code Section 10201.

D. Tod Noelete is not now nor has ever been licensed by the Department.

Brokerage

4.

At all times mentioned, in the Encino, County of Los Angeles, Respondents UCMPI and CHIRCHICK engaged in the business of real estate brokers conducting licensed activities within the meaning of:

A. Code Section 10131(d). Respondents engaged in activities with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed and consummated on behalf of others for compensation or in expectation of compensation and for fees often collected in advance.

B. Code Section 10131(d) and 10131.2. Respondents advertised, solicited and offered to provide loan modification services to economically distressed homeowners seeking adjustments to the terms and conditions of their home loans including, but not limited to, repayment plans, forbearance plans, partial claims, and reduction in principal or interest, extenuations, foreclosure prevention and short sales.

C. UCMPI primarily involved in originating and brokering mortgage loans to various financial institutions for compensation during the audit period. UCMPI closed approximately

twenty-eight (28) mortgage loans, totaling $10,976,000 during the last twelve months.

D. In addition to brokering mortgage loans, UCMPI also handled twenty-one (21) loan modifications through MACH collecting approximately $51,500.00 in fees.

FIRST CAUSE OF ACTION
(Audit Examination)

5.

On April 8, 2010, the Department completed an audit examination of the books and records of UCMPI pertaining to the mortgage loan brokerage and the loan modification activities described in Paragraph 4, above, which require a real estate license. The audit examination covered a period of time beginning on November 1, 2006 to December 31, 2009. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 090133 and the exhibits and work papers attached to said audit report.

Bank and Trust Accounts

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, UCMPI accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties, including economically distressed homeowner-borrowers for advance fees and loan modifications handled by UCMPI and for mortgage loans. Thereafter UCMPI made deposits and or disbursements of

such trust funds. From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by UCMPI in these bank accounts as UCMPI did not maintain a trust account during the audit period:

"MACH Mortgage Consulting LLC
Account No. xxxxxxxx9305
Union Bank of California
Encino, California

(B/A #1 - UCMPI's general business account used for deposit of advance fees collected from homeowners for loan modifications)

Violations of the Real Estate Law

7.

In the course of activities described in Paragraphs 4 and 6, above, and during the examination period described in Paragraph 5, Respondents UCMPI and CHIRCHICK, acted in violation of the Code and the Regulations in that Respondents:

(a)(1) Mixed and commingled trust funds with UCMPI's general funds by depositing trust funds in the form of collected advance fees solicited from homeowner-borrowers for loan modification services into B/A #1, the general business bank account into in violation of Code Sections 10145, 10176(e) and Regulation 2832; and

(a)(2) Failed to advance fees collected by UCMPI/MACH for loan modification activities from borrowers into a trust account in the name of the broker as trustee at a bank or other financial institution, in violation of Code Section 10145 of the

Code and Regulations 2832(a). Advance fees were deposited into UCMPI's general business account.

(b) Failed to establish and maintain a trust account at a bank or other recognized financial institution in the name of the broker for deposit of advance fees collected by UCMPI/MACH for loan modification activities, in violation of Code Section 10146.

(c) Collected advance fees within the meaning of Code Section 10026 from homeowner-borrowers seeking loan modification services wherein UCMPI failed to provide homeowner-borrowers, a pre-approved advance fee agreement from the Department, in violation of Code Section 10085 and Regulation 2970.

(d) With reference to the lack of an advance fee agreement, UCMPI and CHIRCHICK, failed to provide a complete description of services to be rendered provided to each homeowner-borrower in 10 point type font and, an allocation and disbursement of the amount collected as the advance fee for each loan modification, in violation of Code Section 10146 and Regulation 2972.

(e)(1) Failed to retain a true and complete copy of a Department of Real Estate approved Mortgage Loan Disclosure Statement signed by the broker for borrowers, in violation of Code Sections 10240 and 10241 and Regulation 2840;

(e)(2) Failed to disclose the yield spread premium or rebate on the Puffer and Serlin loan transactions, in violation of Code Section 10240 and Regulation 2840;

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(f) Failed to display the Department's license number on the Puffer and Serlin Mortgage Loan Disclosure Statements, in violation of Code Section 10236.4.

(g) Charged borrowers credit report fees in excess of the amount billed by the credit reporting company for borrowers, Reed, Cervantes, Xaverius and Gonzalez, in violation of Code Section 10176(g). On February 5, 2010, CHIRCHICK refunded the aforesaid borrowers.

(h) Used the fictitious name of " MACH Mortgage Consulting, LLC", "MACH", United Capital Mtg Planners" and "United Cap mtg Pinnrs"(sic), to conduct licensed activities including a loan modification and advanced fee brokerage and mortgage loan brokerage services, without first obtaining from the Department a license bearing said fictitious business name, in violation of Code Section 10159.5 and Regulation 2731.

Disciplinary Statutes

8.

The conduct of Respondents UCMPI and CHIRCHICK described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
7(a)	Code Sections 10145 and 10176(e) and Regulation 2832
7(b)	Code Section 10146

7(c)	Code Section 10085 and Regulation 2970
7(d)	Code Section 10146 and Regulation 2972
7(e)	Code Sections 10240 and 10241 and Regulation 2840
7(f)	Code Section 10236.4
7(g)	Code Section 10176(g)
7(h)	Code Section 10159.5 and Regulation 2731

The foregoing violations constitutes cause for discipline of the real estate license and license rights of UCMPI and CHIRCHICK, as aforesaid, under the provisions of Code Sections 10176(e) for commingling for undisclosed compensation 10176(g), 10177(d) for violation of the Real Estate Law and/or 10177(g) for negligence.

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SECOND CAUSE OF ACCUSATION
(Loan Modification Services)

9.

At all times mentioned herein, Respondents UCMPI and CHIRCHICK engaged in the business of a loan modification and advance fee brokerage, within the definition of Code Sections 10131(d) and 10131.2.

General Allegations

10.

During 2008 and continuing thereafter to date, UCMPI and CHIRCHICK, dba MACH Mortgage Consulting LLC, solicited economically distressed homeowners facing foreclosure and eviction from their homes, offered loan modification services, charged and collected advance fees.

Specific Allegations

11.

Through MACH Mortgage Consulting LLC, Respondents UCMPI and CHIRCHICK offered loss mitigation and loan modification services to homeowner-borrowers seeking downward adjustments or payment extenuations to their home mortgages. Respondents collected advanced fees from said homeowner-borrowers without possessing a pre-approved advance fee agreement from the Department. Thereafter, Respondents failed to obtain the loan modification or to provide the services contracted for and paid for in advance, or to refund the advance fees paid by the borrowers tabled below:

Table: Loan Modification Services

Homeowner	Date	Status	Advance Fee
Auturo Pedro Jr.	October 07, 2008	Not obtained	$3,995
Francisco Nuno	November 11, 2008	Not obtained	$2,245
Ramon/Laura Rodriguez	January 9, 2009	Not obtained	$3,000
Daniel Murillo	January 19, 2009	Not obtained	$2,995
Total			$12,235

Loan Modification Violations and Disciplinary Statutes

12.

The conduct of Respondents UCMPI and CHIRCHICK violated the Code and the Regulations as set forth below with respect to the tabled homeowner-borrowers:

13.

13(a) Code Section 10176(a) for substantial misrepresentation.

13(b) Code Section 10176(b) for making false promises of a character likely to influence, persuade or induce the aforesaid homeowner-borrowers.

13(c) Code Section 10177(d) for violation of the Real Estate Law.

13(d) Code Section 10137 for employing and/or compensating unlicensed loss mitigation agents Tod Noelete (Arturo Pedro Jr.) and/or licensed real estate salespersons that were non broker affiliated including, but not limited to Michael Spencer Borghetti (Ramon Rodriguez and Daniel Murillo).

13(e) Code Section 10177(g) for negligence.

Negligence

14.

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

Breach of Fiduciary Duty

15.

The overall conduct of Respondents UCMPI and CHIRCHICK constitutes a breach of fiduciary duty. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of said Respondents pursuant to the provisions of Code Sections 10176(i) and/or 10177(g).

THIRD CAUSE OF ACCUSATION
(Failure to Supervise)

16.

The overall conduct of Respondent CHIRCHICK constitutes a failure on Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of UCMPI, as required by Code Sections 10159.2 and 10211, and to keep UCMPI in compliance with the Real Estate Law, with specific regard to loan modifications services and advance fee handling, requiring a real estate license and is cause for the suspension or revocation of the real estate license and license rights of UCMPI and CHIRCHICK pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

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 the license and license rights of Respondents UNITED CAPITAL MORTGAGE PLANNERS INC. and JOSHUA LESLIE CHIRCHICK, under the Real Estate Law (Part 1 of vision 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law including restitution of advanced fees paid for unearned loan modifications, and for costs of audit.

Dated at Los Angeles, California

this 9 March 2011.

Deputy Real Estate Commissioner

cc: United Capital Mortgage Planners Inc.
c/o Joshua Leslie Chirchick D.O.
Maria Suarez
Sacto
Audits - Manijeh Khazrai