

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
6
7

FILED
APR - 4 2001

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Application of)
13) CASE NO. H-7884 SF
14 MARIA THERESA ALVA,) OAH NO. N-2001010384
15 individually and)
16 doing business as)
17 CAL RENTALS,)
18 Respondent.)

17 In the Matter of the Order to Desist)
18 And Refrain to:)
19) CASE NO. H-7886 SF
20 MARIA THERESA ALVA,) OAH NO. N-2001010384
21 individually and)
22 doing business as)
23 CAL RENTALS, and)
24 DAVID CALVO)
25 Respondents.)

24 STIPULATION AND AGREEMENT

25 It is hereby stipulated by and between MARIA THERESA
26 ALVA, individually and doing business as CAL RENTALS (hereafter
27 Respondent), represented by James F. Landrum, Jr., Attorney at

1 Law, Landrum & Company, Inc., and the Complainant, acting by
2 and through Deidre L. Johnson, Counsel for the Department of
3 Real Estate, as follows for the purpose of settling and
4 disposing of the Statement of Issues filed on October 12, 2000,
5 and the Order to Desist and Refrain filed on October 20, 2000,
6 in the above-captioned matters:

7 1. All issues which were to be contested and all
8 evidence which was to be presented by Complainant and Respondent
9 at a formal consolidated hearing on the Statement of Issues and
10 the Order to Desist and Refrain, which hearing was to be held in
11 accordance with the provisions of the Administrative Procedure
12 Act (APA), shall instead and in place thereof be submitted solely
13 on the basis of the provisions of this Stipulation and Agreement.

14 2. Respondent has received, read and understands the
15 Statement to Respondent, and the Discovery Provisions of the APA
16 filed by the Department of Real Estate in these proceedings.

17 3. On October 23, 2000, Respondent filed a Notice of
18 Defense in the matter of the Statement of Issues, and on
19 January 24, 2001, she filed a Notice of Defense in the matter of
20 the Order to Desist and Refrain, pursuant to Section 11505 of the
21 Government Code, for the purpose of requesting a hearing on the
22 allegations in each matter. Respondent hereby freely and
23 voluntarily withdraws said Notices of Defense. Respondent
24 acknowledges that she understands that by withdrawing said
25 Notices of Defense she will thereby waive her rights to require
26 the Commissioner to prove the allegations in each matter at a
27 contested hearing held in accordance with the provisions of the

1 APA, and that she will waive other rights afforded to her in
2 connection with the hearing(s) such as the right to present
3 evidence in defense of the allegations in the above matters and
4 the right to cross-examine witnesses.

5 4. Respondent, pursuant to the limitations set forth
6 below, hereby admits that the factual allegations in Paragraphs I
7 through V of the Statement of Issues, and Paragraphs I through IV
8 of the Order to Desist and Refrain filed in these proceedings are
9 true and correct and the Real Estate Commissioner shall not be
10 required to provide further evidence of such allegations.

11 5. Without admitting the truth of the allegations
12 contained in the remaining paragraphs of the Statement of Issues
13 and the Order to Desist and Refrain, Respondent stipulates that
14 she will not interpose defenses thereto. This Stipulation is
15 based on the factual allegations contained in the Statement of
16 Issues and the Order to Desist and Refrain. In the interests of
17 expedience and economy, Respondent chooses not to contest these
18 allegations, but to remain silent and understands that, as a
19 result thereof, these factual allegations, without being admitted
20 or denied, will serve as a basis for the disposition of each
21 matter stipulated to herein. The Real Estate Commissioner shall
22 not be required to provide further evidence to prove said factual
23 allegations.

24 6. In connection with the Statement of Issues,
25 Respondent understands that by filing the Statement of Issues the
26 Real Estate Commissioner has shifted the burden to her to make a
27 satisfactory showing that she meets all requirements for issuance

1 of a prepaid rental listing service license, and that by entering
2 into this stipulation and agreement she stipulates that the Real
3 Estate Commissioner has found that she has failed to make such a
4 showing, thereby justifying the denial of the issuance to her of
5 a plenary prepaid rental listing service license.

6 7. It is understood by the parties that the Real
7 Estate Commissioner may adopt this Stipulation and Agreement as
8 the decision in these matters thereby imposing the "Order" below.
9 In the event that the Commissioner in her discretion does not
10 adopt the Stipulation and Agreement, it shall be void and of no
11 effect, and Respondent shall retain the rights to hearings and
12 proceedings herein under all the provisions of the APA, and shall
13 not be bound by any admission or waiver made herein.

14 8. The Order or any subsequent Order of the Real
15 Estate Commissioner made pursuant to this Stipulation and
16 Agreement shall not constitute an estoppel, merger or bar to any
17 further administrative or civil proceedings by the Department of
18 Real Estate with respect to any matters which were not
19 specifically alleged to be causes for accusation in these
20 proceedings.

21 DETERMINATION OF ISSUES

22
23 By reason of the foregoing stipulations and waivers and
24 for the purpose of settlement of the pending Statement of Issues
25 and Order to Desist and Refrain without a hearing, it is
26
27

1 stipulated and agreed that the following determination of issues
2 shall be made:

3 I

4 The acts and/or omissions of Respondent MARIA THERESA
5 ALVA, individually and doing business as CAL RENTALS, as
6 stipulated above violate Sections 10167.2, 10167.9(a) and (d),
7 and 10167.10(a) and (b) of the California Business and
8 Professions Code (hereafter the Code), and constitute cause for
9 the denial of Respondent's application for a prepaid rental
10 listing service license of Respondent under the provisions of
11 Section 10167.4 of the Code.

12 II

13 The acts and/or omissions of Respondent MARIA THERESA
14 ALVA, individually and doing business as CAL RENTALS, as found in
15 Paragraph II above, constitute cause to uphold the Order to
16 Desist and Refrain.

17 ORDER

18
19 A. The Order to Desist and Refrain filed on October 20, 2000, is
20 affirmed; provided, however, with respect to conduct alleged
21 to be performing acts without a license, it is hereby stayed
22 pending timely issuance of the license granted below. The
23 Order is affirmed as to all remaining violations other than
24 licensure.
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1 B. The application of Respondent MARIA THERESA ALVA,
2 individually and doing business as CAL RENTALS for a prepaid
3 rental listing service operator license is denied; provided,
4 however, a restricted prepaid rental listing service
5 operator license shall be issued to Respondent forthwith
6 pursuant to Section 10156.5 of the Code, and subject to
7 contract approval pursuant to Section 10167.9(c) of the
8 Code.

9 C. The restricted prepaid rental listing service operator
10 license issued to Respondent shall be subject to all of the
11 provisions of Section 10156.7 of the Business and
12 Professions Code and to the following limitations imposed
13 under authority of Section 10156.6 of said Code:

14 1) The license shall not confer any property right in the
15 privileges to be exercised, and the Real Estate
16 Commissioner may by appropriate order suspend the right
17 to exercise any privileges granted under this restricted
18 license in the event of:

19 (a) The conviction of Respondent (including a plea
20 of nolo contendere) of a crime which is
21 substantially related to Respondent's fitness or
22 capacity as a prepaid rental listing service
23 licensee.

24 (b) The receipt of evidence that Respondent has
25 violated provisions of the prepaid rental listing
26 service laws, regulations of the Real Estate
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Commissioner, or conditions attaching to the restricted license.

2) Respondent shall not be eligible to apply for the issuance of an unrestricted prepaid rental listing service operator license, nor the removal of any of the conditions of the restricted license, until two (2) years have elapsed from the effective date of this Order.

March 15, 2001
DATED

Deidre L. Johnson
DEIDRE L. JOHNSON
Counsel for the Complainant

* * *

I have read the Stipulation and Agreement, have discussed it with my counsel or understand that I have the right to consult legal counsel, 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, and I willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Statement of Issues and the Order to Desist and Refrain 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.

3.14.01
DATED

Maria T. Alva
MARIA THERESA ALVA
Respondent

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APPROVED AS TO FORM:

03/14/01

DATED

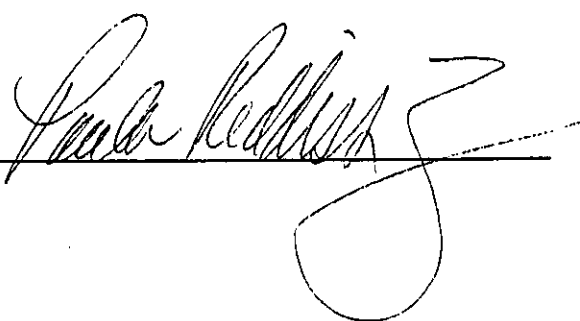

JAMES F. LANDRUM, JR.
Counsel for Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision and shall become effective at 12 o'clock noon on April 24, 2001.

IT IS SO ORDERED March 28, 2001.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



F I L E D
FEB - 9 2001

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By: Kathleen Contreras

In the Matter of the Application of/Order to Desist
and Refrain Directed to
MARIA THERESA ALVA, Individually
and doing business as CAL RENTALS;
and, DAVID CALVO,

Case No. H-7884 SF (S/I) and
Case No. H-7886 SF (D&R)
OAH No. N-2001010384

Respondent s

FIRST CONTINUED AND CONSOLIDATED
NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at The
Office of Administrative Hearings, the Elihu Harris State
Bulding, 1515 Clay Street, Suite 206, Oakland, California 94612

on March 20, 2001, March 21, 2001 & March 22, 2001, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place
of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within
ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days
will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You
are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent
yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the
Department may take disciplinary action against you based upon any express admission or other evidence including
affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are
not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses
testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the
production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who
does not proficiently speak the English language, you must provide your own interpreter and pay for his or her costs.
The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: February 6, 2001

By: Deidre L. Johnson
DEIDRE L. JOHNSON Counsel

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
OCT 20 2000

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 To:)
13)
14) MARIA THERESA ALVA,) NO. H- 7886 SF
15) individually and)
16) doing business as)
17) CAL RENTALS, and) ORDER TO DESIST & REFRAIN
18) DAVID CALVO.) (B&P §10086)
19)

20 The Real Estate Commissioner of the State of California
21 has determined from the findings herein set forth below that you,
22 MARIA THERESA ALVA, individually and doing business as CAL
23 RENTALS, have violated Section 10130 and/or Section 10167.2 of
24 the California Business and Professions Code (hereafter the
25 "Code") by engaging in the business of a prepaid rental listing
26 service within the State of California without either a real
27 estate broker license or a prepaid rental listing service
license; and Sections 10167.5, 10167.9(a), 10167.9(d),
10167.10(b), 10167.11(a), and 10167.11(b)(4) of the Code in the
conduct of the business as set forth below.

1 PRELIMINARY FINDINGS

2 I

3 At no time herein mentioned were you, MARIA THERESA
4 ALVA, licensed by the Department of Real Estate of the State of
5 California (hereafter "Department") as a real estate broker,
6 individually or doing business under any fictitious business
7 name. On or about May 5, 1999, your license from the Department
8 to conduct the business of a prepaid rental listing service
9 individually and/or under the fictitious business name of CAL
10 RENTALS expired.

11 II

12 On or about August 9, 1999, pursuant to the provisions
13 of Section 10167.3 of the Business and Professions Code
14 (hereafter the Code), you made application to the Department for
15 renewal of the prepaid rental listing service (hereafter PRLS)
16 license.

17 III

18 On or about October 29, 1999, the Department notified
19 you that your application was deficient for reasons including but
20 not limited to complaints about your business practices, your
21 failure to submit proof of a current surety bond, and your
22 failure to obtain the Department's approval of current PRLS
23 contract documents, as required by law.

24 IV

25 At all times herein mentioned, you, DAVID CALVO, were
26 the office manager, agent, and/or employee of the above business.
27 Unless otherwise specified, whenever reference is made herein to

1 an act or omission of "you", such reference shall be deemed to
2 mean that you, MARIA THERESA ALVA, and/or you, DAVID CALVO, the
3 employees and/or agents employed by or associated with you,
4 committed such act or omission while engaged in the furtherance
5 of your business operation, and while acting within the course
6 and scope of their authority and employment.

7
8 FIRST CAUSE OF ACTION
(Unlicensed Business)

9 V

10 During a period of time commencing from about May 5,
11 1999, to the present, you have engaged in the business and acted
12 in the capacity of a real estate broker or prepaid rental listing
13 service operator in California within the meaning of Section
14 10167 of the Code, for advance compensation, wherein prospective
15 tenants were solicited to enter into contracts and purchase
16 prepaid rental listing services, and wherein such services were
17 offered and sold, including but not limited to the following:

18

BEGINNING CONTRACT DATE	PRLS ADVANCE FEE	PROSPECTIVE TENANT
5/14/99	\$108	Shantel Haynes
8/1/99	\$88	Arkady Kisin
8/26/99	\$108	Rebecca Torczyner
8/31/99	\$128	Danielle Karmel

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VI

During a period of time commencing from about May 5, 1999, to the present, you solicited the public with respect to the above PRLS business by methods including advertisements, including but not limited to ads in various newspaper(s), and on the World Wide Web on the Internet, with an address of <http://www.calrentals.com>.

VII

In the Spring of 2000, the Department surveyed your business records of refunds made by you in January, 2000, to your PRLS clients for PRLS fees paid by them to your company from at least May of 1999 through January of 2000, and found at least 48 PRLS contracts made between your company and prospective tenants during that time period, including but not limited to the clients listed in Paragraph V above.

VIII

You have violated Section 10167.2 and/or Section 10130 of the Code in that your acts and/or omissions, as found above, constitute the conduct of a PRLS business without a real estate broker license or a PRLS license

SECOND CAUSE OF ACTION
(Refund Violations)

IX

In addition to the basic fees charged to clients for PRLS services, you have charged clients an extra "Zip Service" charge of about \$20.00 for furnishing or delivery of the listings of available rental units or properties to the client by fax or e-mail delivery.

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X

Since at least February of 1999, in connection with many PRLS contracts, you have failed to submit, for pre-approval by the Department, a written contract that includes a description of the "Zip Service" delivery charges, and your proposed limitations or conditions that such charge would be "nonrefundable" and would not be included in the total amount charged by you for PRLS services and paid by each client, for purposes of calculating the refund required to be made to clients requesting a refund under the law as found in Paragraphs XII through XIV below.

XI

Since at least February of 1999, in connection with many PRLS contracts, you have failed to provide the correct amount of the partial refund that is required under Section 10167.10(b) of the Code to be made, by subtracting only a \$25.00 service charge from the full amount paid by each client for the PRLS services provided, including but not limited to the transactions set forth in Paragraph XIII below.

XII

Since at least February of 1999, in connection with many PRLS contracts, you have failed to provide a timely refund of the full refund that is required under Section 10167.10(a) within the first 15 days of the contract; and/or failed to provide a timely refund of the partial refund that is required under Section 10167.10(b) of the Code to be made within 10 days after receipt by the licensee of a timely demand for refund from

1 the client, including but not limited to the transactions set
2 forth in Paragraph XIII below.

3 XIII

4 The transactions referred to in Paragraphs X, XI, and
5 XII above include, but are not limited to the following:

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CLIENT	REQUEST OR CONTRACT DATE	TYPE AND REFUND DUE	REFUND PAID	DATE PAID
S. Haynes	Request 5/19/99	Full \$108	\$108	11/17/99
R. Torczyner	11/24/99	Partial \$83	\$63	1/13/00
A. Kisin	10/30/99	Partial \$63	\$43	1/16/00
B. Ino	Request 2/26/99	Partial \$83	\$63	4/3/99
D. Karmel	11/29/99	Partial \$103	\$83	1/17/00
P. Talauega	8/23/99	Partial \$103	\$83	1/16/00
K. Rodgers	9/27/00	Partial \$63	\$63	1/30/00
R. Zamores	10/1/99	Partial \$63	\$63	1/16/00
B. Lizarraga	10/9/99	Partial \$63	\$43	1/24/00
Q. Tao	10/15/99	Partial \$53	\$53	1/16/00
Y. Knighten	10/21/99	Partial \$63	\$43	1/24/00

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XIV

The Department's survey of your business records referred to above found that, with respect to approximately 46% of the sampled contracts made between your company and prospective tenants, you made substantially untimely refunds; and that, with respect to approximately 29% of the sampled records, you made incorrect and deficient refund amounts to eligible clients.

XV

You have violated Section 10167.10(a) and Section 10167.10(b) by reason of the acts and/or omissions alleged in Paragraphs IX through XIV above.

THIRD CAUSE OF ACTION
(Haynes Transaction)

XVI

On or about May 14, 1999, prospective tenant Shantel De Anne Haynes (hereafter Haynes) contacted your company by telephone from South San Francisco, a distance under fifty miles from your place of business in Santa Clara, California. Haynes inquired whether you could provide her with PRLS services to locate appropriate Section 8 rental housing in San Mateo. Your employee(s) or agent(s) assured her that you could deliver such services for a price of \$60.00. Haynes relied on the above representations and authorized payment to you of \$60.00 by credit card over the telephone.

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XVII

You failed to provide Haynes with a written contract containing all of the information required under Section 10167.9(a), including but not limited to: the total price, a description of the specific services to be provided, Haynes' specifications for the rental property she was looking for, refund rights, and the signature of a company representative binding the company to perform.

XVIII

Within five (5) days after payment by Haynes for the above-represented services, Haynes discovered that the above representations regarding your company's ability to meet her specifications for \$60.00 were false, untrue, misleading or deceptive, and were or should have been known by you to be false, untrue, misleading or deceptive. The true facts then existing were that you charged Haynes \$108.00 for your services on her family credit card without her consent or authorization, including a "nonrefundable" zip service charge of \$20.00 for furnishing listings by fax or e-mail, and that the listings you delivered to Haynes did not contain available Section 8 housing in the San Mateo area for rent. Haynes timely demanded a full refund.

XIX

You failed to provide Haynes with at least three (3) available rental properties meeting her specifications within five (5) days after payment; and you failed and refused to promptly and timely refund the full fee of \$108.00 to Haynes upon

1 presentation by her of evidence of the failure to meet her
2 specifications. You violated Section 10167.10(a) by reason of
3 the above conduct.

4 XX

5 By reason of the acts and/or omissions found in
6 Paragraphs XVI through XIX above, you also violated Sections
7 10167.9(a), 10167.9(d), and 10167.11(a) of the Code.

8
9 FOURTH CAUSE OF ACTION
(No Owner Consent)

10 XXI

11 Since at least in June of 1997, in connection with many
12 PRLS transactions, you have published, supplied, or furnished
13 prospective tenants with rental information from landlords,
14 realtors, and/or property managers regarding available or
15 purportedly available rentals, where you have not obtained
16 written or oral permission to list the real property from the
17 property owner, manager, or other authorized agent pursuant to
18 Section 10167.11(b)(4).

19 XXII

20 Transactions referred to above include but are not
21 limited to the following:

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OWNER/MANAGER	PROPERTY	DATE
GREGORY FARRIS	Grimsby Drive, San Jose	6/97 and 5/99
PAULINE KOUVALAS	<u>MULTIPLE, including:</u> 524 S. Willard, San Jose; 975 Palm, San Jose; 2129 Randolph, San Jose	SPRING, 1999 AND ONGOING
LLOYD KIPP	<u>MULTIPLE, including:</u> South San Jose Condo; North San Jose Condo	2/98 5/00 and ONGOING

XXIII

You have violated Section 10167.11(b) by publishing, supplying, or furnishing rental information regarding rental real properties without the consent of the appropriate property owner, manager, or other authorized agent of each such property.

FIFTH CAUSE OF ACTION

XXIV

At all times mentioned herein, you, MARIA THERESA ALVA, failed to exercise reasonable supervision and control of the activities of the company for which a real estate license or prepaid rental listing service license is required. In particular, you permitted, ratified and/or caused some or all of the acts and/or omissions found herein to occur, and/or failed to take reasonable steps to oversee the daily operations of the company, including but not limited to the provision of listing information from consenting owners, managers, or agents, and the

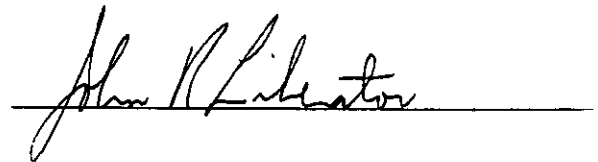
1 timely processing of claims for accurate full and partial refunds
2 without extra nonrefundable delivery charges, and to ensure
3 compliance by the company with the prepaid rental listing service
4 laws.

5 NOW, THEREFORE, YOU, MARIA THERESA ALVA, INDIVIDUALLY
6 AND DOING BUSINESS AS CAL RENTALS, AND YOU, DAVID CALVO, YOUR
7 AGENTS, EMPLOYEES, SUCCESSORS, AND ASSIGNS (COLLECTIVELY "YOU"),
8 ARE HEREBY ORDERED TO DESIST AND REFRAIN from performing any and
9 all acts for which a real estate license or a prepaid rental
10 listing service license is required as found in Paragraphs V
11 through VIII above until such time as you may obtain the required
12 license from the Department.

13 YOU ARE HEREBY FURTHER ORDERED TO DESIST AND REFRAIN
14 from performing any and all acts for which a real estate license
15 or a prepaid rental listing service license is required unless or
16 until such time as you submit proof satisfactory to the
17 Commissioner that you are in compliance with the law with respect
18 to the findings as set forth in Paragraphs IX through XXIV above.

19 DATED: October 16, 2000.

20 PAULA REDDISH ZINNEMANN
21 Real Estate Commissioner

22 
23

24 cc: MARIA THERESA ALVA
25 Individually and
26 dba CAL RENTALS
27 DAVID CALVO
3911 Stevens Creek Blvd. #202
Santa Clara, CA 95051

BY: **John R. Liberator**
Chief Deputy Commissioner

ATTY/DLJ