

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)

FILED
FEB - 2 2005
DEPARTMENT OF REAL ESTATE

By *Handwritten Signature*

THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

DRE No. H-30853 LA

JIMISE JOYCE PHILLIPS, doing
business as Century 21 Universal,
Universal Loans and Universal
Realty,

STIPULATION
AND
AGREEMENT

Respondent.

It is hereby stipulated by and between JIMISE JOYCE PHILLIPS (sometimes referred to as "Respondent"), represented by Charles Benninghoff, Professional Advocate of Benninghoff & Ramirez, 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 filed on April 20, 2004, in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing was to be

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

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

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

22 4. This Stipulation is based on the factual
23 allegations contained in the Accusation. In the interest of
24 expedience and economy, Respondent chooses not to contest these
25 allegations, but to remain silent and understands that, as a
26 result thereof, these factual allegations, without being admitted
27

1 or denied, will serve as a prima facie basis for the disciplinary
2 action stipulated to herein. The Real Estate Commissioner shall
3 not be required to provide further evidence to prove said factual
4 allegations.

5 5. This Stipulation and Respondent's decision not to
6 contest the Accusation is made for the purpose of reaching an
7 agreed disposition of this proceeding and is expressly limited to
8 this proceeding and any other proceeding or case in which the
9 Department of Real Estate ("Department"), the state or federal
10 government, or any agency of this state, another state or federal
11 government is involved.

12 6. It is understood by the parties that the Real
13 Estate Commissioner may adopt this Stipulation as his Decision in
14 this matter thereby imposing the penalty and sanctions on
15 Respondent's real estate license and license rights as set forth
16 in the "Order" herein below. In the event that the Commissioner,
17 in his discretion, does not adopt the Stipulation, it shall be
18 void and of no effect and Respondent shall retain the right to a
19 hearing and proceeding on the Accusation under the provisions of
20 the Administrative Procedures Act and shall not be bound by any
21 stipulation or waiver made herein.
22

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

5 8. Respondent understands that by agreeing to this
6 Stipulation, Respondent agrees to pay, pursuant to Business and
7 Professions Code Section 10148, the cost of the audit which led
8 to this disciplinary action. The amount of said cost is audit
9 \$5,953.70.

10 9. Respondent has received, read, and understands the
11 "Notice Concerning Costs of Subsequent Audit". Respondent
12 further understands that by agreeing to this Stipulation, the
13 findings set forth below in the Determination of Issues become
14 final, and the Commissioner may charge Respondent for the cost of
15 any subsequent audit conducted pursuant to Business and
16 Professions Code Section 10148 to determine if the violations
17 have been corrected. The maximum cost of the subsequent audit
18 will not exceed \$5,953.70.
19

20 DETERMINATION OF ISSUES

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

23 The conduct of JIMISE JOYCE PHILLIPS, as described in
24 Paragraph 4, constitutes a violation of Business and Professions
25 Code ("Code") Section 10145, 10160 and 10161.8 and violations of
26 Title 10, Chapter 6, California Code of Regulations Sections
27

1 2725, 2726, 2752, 2753, 2831, 2831.1, 2831.2, 2832.1, 2950(d),
2 2950(f) and 2950(g). This conduct is a basis for the suspension
3 or revocation of Respondent's license pursuant to Section
4 10177(d) and 10177(g) of the Business and Professions Code.

5 ORDER

6 WHEREFORE THE FOLLOWING ORDER IS HEREBY MADE:

7 All licenses and licensing rights of Respondent JIMISE
8 JOYCE PHILLIPS under the Real Estate Law are suspended for a
9 period of one hundred eighty (180) days from the effective date
10 of this Decision; provided, however:

11 A. Prior to the effective date of this Decision
12 Respondent provides evidence satisfactory to the Commissioner
13 that the trust fund deficit set forth in Audit Report LA 020172,
14 in the amount of \$20,960.81, as of November 29, 2002, has been
15 cured, including the identity of the source of funds used to cure
16 it;

17
18 B. All licenses and licensing rights of Respondent are
19 indefinitely suspended unless or until Respondent provides proof
20 satisfactory to the Commissioner, of having taken and
21 successfully completed the continuing education course on trust
22 fund accounting and handling specified in paragraph (3) of
23 subdivision (a) of Section 10170.5 of the Business and
24 Professions Code. Proof of satisfaction of this requirement
25 includes evidence that Respondent has successfully completed the
26 trust fund account and handling continuing education course
27

1 within 120 days prior to the effective date of the Decision in
2 this matter.

3 C. The initial sixty (60) day portion of said one
4 hundred eighty (180) day suspension shall commence on the
5 effective date of this Decision; provided, however, that if a
6 Respondent petitions, said suspension shall be stayed upon
7 condition that:

8 1. Pursuant to Section 10175.2 of the Business and
9 Professions Code, Respondent pays a monetary penalty of fifty
10 dollars (\$50.00) per day totaling Three Thousand Dollars
11 (\$3,000).

12 2. Said payment shall be in the form of a cashier's
13 check or certified check made payable to the Recovery
14 Account of the Real Estate Fund. Said check must be received
15 by the Department prior to the effective date of the Decision
16 in this matter.

17 3. No further cause for disciplinary action against
18 the real estate license of Respondent occurs within two (2) years
19 from the effective date of the Decision in this matter.

20 4. If Respondent fails to pay the monetary penalty in
21 accordance with the terms and conditions of the Decision, the
22 Commissioner may, without a hearing, order the immediate
23 execution of all or any part of the stayed suspension in which
24 event Respondent shall not be entitled to any repayment nor
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1 credit, prorated or otherwise, for money paid to the Department
2 under the terms of this Decision.

3 5. If Respondent pays the monetary penalty and if no
4 further cause for disciplinary action against the real estate
5 licenses of Respondent occurs within two (2) years from the
6 effective date of the Decision, the stay hereby granted shall
7 become permanent.

8 D. The remaining one hundred twenty (120) days of the
9 one hundred eighty (180) day suspension shall be stayed for two
10 (2) years upon the following terms and conditions:

11 (1) Respondent shall obey all laws, rules and
12 regulations governing the rights, duties and responsibilities of
13 a real estate licensee in the State of California; and

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

22 E. Respondent shall, within six (6) months from the
23 effective date of Decision, take and pass the Professional
24 Responsibility Examination administered by the Department
25 including the payment of the appropriate examination fee. If
26
27

1 Respondent fails to satisfy this condition, the Commissioner may
2 order suspension of the restricted license until Respondent
3 passes the examination.

4 II

5 Pursuant to Section 10148 of the Business and
6 Professions Code, Respondent shall pay the Commissioner's
7 reasonable cost for (a) the audit which led to this disciplinary
8 action and (b) a subsequent audit to determine if Respondent
9 JIMISE JOYCE PHILLIPS is now in compliance with the Real Estate
10 Law. In calculating the amount of the Commissioner's reasonable
11 cost, the Commissioner may use the estimated average hourly
12 salary for all persons performing audits of real estate brokers,
13 and shall include an allocation for travel costs, including
14 mileage, time to and from the auditor's place of work and per
15 diem. Said amount for the prior and subsequent audits shall not
16 exceed \$11,907.40.

17
18 Respondent shall pay such cost within 45 days of
19 receiving an invoice from the Commissioner detailing the
20 activities performed during the audit and the amount of time
21 spent performing those activities.

22 The Commissioner may, in his discretion, vacate and set
23 aside the stay order, if payment is not timely made as provided
24 for herein, or as provided for in a subsequent agreement between
25 the Respondent and the Commissioner. The vacation and set aside
26 of the stay shall remain in effect until payment is made in full
27

1 or until Respondent enters into an agreement satisfactory to the
2 Commissioner to provide for payment. Should no order vacating
3 the stay be issued, either in accordance with this condition or
4 condition "2", the stay imposed herein shall become permanent.

5
6 DATED: 12-28-04

EJL
ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

8
9 * * *

10 I have read the Stipulation and Agreement and have
11 discussed it with my professional advocate. Its terms are
12 understood by me and are agreeable and acceptable to me. I
13 understand that I am waiving rights given to me by the California
14 Administrative Procedure Act (including but not limited to
15 Sections 11506, 11508, 11509 and 11513 of the Government Code),
16 and I willingly, intelligently and voluntarily waive those
17 rights, including the right of requiring the Commissioner to
18 prove the allegations in the Accusation at a hearing at which I
19 would have the right to cross-examine witnesses against me and to
20 present evidence in defense and mitigation of the charges.

21
22 Respondent JIMISE JOYCE PHILLIPS can signify acceptance
23 and approval of the terms and conditions of this Stipulation and
24 Agreement by faxing a copy of its signature page, as actually
25 signed by Respondent, to the Department at the following
26 telephone/fax number: (213) 576-6917, Attention: Elliott Mac
27

DEC-29-04 WED (5:18 PM)

FAX NO. 2135768917

P. 11

Respondent agrees, acknowledges and understands that by
received the original signed Stipulation and Agreement.

DATED: 12/29/04

James Joyce Phillips
JIMISE JOYCE PHILLIPS, Respondent

DATED: 12/30/04

Charles Benninghoff
CHARLES BENNINGHOFF,
Professional Advocate for
Respondent
Approved as to form

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision and shall become effective at
12 o'clock noon on _____, 2005.

IT IS SO ORDERED _____, 2005.

JEFF DAVI
Real Estate Commissioner

1 Lennan. Respondent agrees, acknowledges and understands that by
2 electronically sending to the Department a fax copy of
3 Respondent's actual signature as it appears on the Stipulation
4 and Agreement, that receipt of the faxed copy by the Department
5 shall be as binding on Respondent as if the Department had
6 received the original signed Stipulation and Agreement.

7
8
9 DATED: _____

JIMISE JOYCE PHILLIPS, Respondent

10
11
12 DATED: _____

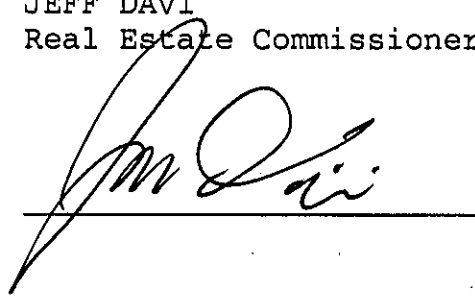
CHARLES BENNINGHOFF,
Professional Advocate for
Respondent
Approved as to form

13
14
15
16 * * *

17 The foregoing Stipulation and Agreement is hereby
18 adopted as my Decision and shall become effective at
19 MAR -2
20 12 o'clock noon on _____, 2005.

21 IT IS SO ORDERED 1 - 25, 2005.

22 JEFF DAVI
23 Real Estate Commissioner

24
25 
26
27

Handwritten: [Signature]

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
SEP 17 2004
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

JIMISE JOYCE PHILLIPS,

By *K. Kederhols*

Case No. H-30853 LA

OAH No. L-2004060720

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at **Office of Administrative Hearings, 320 West Fourth Street, Ste. 630, Los Angeles, CA** on **January 4-6, 2005**, at the hour of **9:00 a.m.**, or as soon thereafter as the matter can be heard, upon the Accusation 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.

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 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: SEP 17 2004

By *[Signature]*

ELLIOTT MAC LENNAN, Counsel

cc: Jimise Joyce Phillips
Charles Benninghoff
Sacto/OAH/JN

*Mac
Fly*

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)

FILED
APR 20 2004
DEPARTMENT OF REAL ESTATE

By *K. Melchert*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

No. H-30853 LA

JIMISE JOYCE PHILLIPS, doing
business as Century 21 Universal,
Universal Loans, and Universal
Realty,

A C C U S A T I O N

Respondent.

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, for cause of Accusation
against JIMISE JOYCE PHILLIPS dba Century 21 Universal, Universal
Loans, and Universal Realty ("PHILLIPS"), 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 JIMISE JOYCE PHILLIPS.

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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 At all times mentioned, PHILLIPS was licensed or had
8 license rights issued by the Department of Real Estate
9 (Department) as a real estate broker. On January 25, 1995,
10 PHILLIPS was originally licensed as a real estate broker.

11 4.

12 At all times mentioned, in the City of Inglewood,
13 County of Los Angeles, PHILLIPS acted as a real estate broker and
14 conducted licensed activities within the meaning of:

15 A. Section 10131(a) of the Code in that PHILLIPS
16 operated a residential resale brokerage dba Century 21 Universal
17 and Universal Realty;

18 B. Section 10131(d) of the Code in that PHILLIPS
19 operated, a mortgage and loan brokerage dba Universal Loans; and
20

21 C. Conducted broker-controlled escrows through the in-
22 house escrow division for Universal Realty, under the exemption
23 set forth in California Financial Code Section 17006(a)(4) for
24 real estate brokers performing escrows incidental to a real
25 estate transaction where the broker is a party and where the
26 broker is performing acts for which a real estate license is
27 required.

1
2 5.

3 On March 28, 2003, the Department completed an audit
4 examination of the books and records of PHILLIPS dba Century 21
5 Universal, Universal Loans and Universal Realty pertaining to the
6 broker-escrow activities described in Paragraph 4, that require a
7 real estate license for the residential resale and mortgage and
8 loan activities. The audit examination covered a period of time
9 beginning on September 1, 2000 to November 29, 2002. The audit
10 examination revealed violations of the Code and the Regulations
11 as set forth in the following paragraphs, and more fully
12 discussed in Audit Report LA 020172 and the exhibits and
13 workpapers attached to said audit report.
14

15 6.

16 At all times mentioned, in connection with the
17 activities described in Paragraph 4, above, PHILLIPS accepted or
18 received funds in trust (trust funds) from or on behalf of
19 purchasers and sellers and borrowers and lenders and thereafter
20 made disposition of such funds. PHILLIPS maintained the
21 following escrow trust account during the audit period into which
22 were deposited certain of these funds at:

23 "Universal Realty - Escrow Division Trust Account
24 Account No. 9120130959"
25 Union Bank of California
26 Los Angeles, California
27 (escrow trust account)

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With respect to the trust funds referred to in Paragraph 6, it is alleged that PHILLIPS:

(a) Permitted, allowed or caused the disbursement of trust funds from the escrow trust account where the disbursement of funds reduced the total of aggregate funds in the escrow trust account, to an amount which, on November 29, 2002, was \$20,960.81, less than the existing aggregate trust fund liability of PHILLIPS to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code Section 10145 and Regulations 2832.1, 2950(g) and 2951.

(b) Failed to maintain an adequate or complete control record in the form of a columnar record in chronological order of all trust funds received in and disbursed from the escrow trust account, as required by Code Section 10145 and Regulations 2831, 2950(d) and 2951.

(c) Failed to maintain an accurate and complete separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited into, and disbursed from the escrow trust account, as required by Code Section 10145 and Regulations 2831.1, 2950(d) and 2951.

(d) Failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the control record

1 of all trust funds received and disbursed by the escrow trust
2 account as required by Regulation 2831, in violation of Code
3 Section 10145 and Regulations 2831.2, 2950(d) and 2951.

4 (e) As escrow agent for Universal Realty, failed to
5 disburse from the escrow trust account broker's escrow fees
6 totaling \$9,085.00, within twenty-five (25) days of deposit, in
7 violation of Code Section 10145 and Regulation 2835(b), 2950(d)
8 and 2951.

9 (f) Permitted Melanie Brodnax, who was not licensed to
10 bonded, to be an authorized signatory on the escrow trust account
11 who signed check #1386 on October 10, 2002, and permitted real
12 estate broker, Phil Phillips, to be an authorized signatory on
13 the escrow trust account without a written agreement specifically
14 authorizing his signature authority, in violation of Code Section
15 10145 and Regulation 2834.

16 (g) While acting in the capacity of an escrow agent and
17 holder for her in-house escrow for Universal Realty in the
18 mortgage loan for borrower Josephina Perez, failed to place trust
19 funds, including earnest money deposits, accepted on behalf of
20 another into the hands of the owner of the funds, a neutral
21 escrow depository or into a trust fund account in the name of the
22 broker at a bank or other financial institution not later than
23 the next business day following receipt of the funds by the
24 broker or by the broker's salesperson, in violation of Regulation
25 2950(f). Josephina Perez' funds were received on June 11, 2001
26
27

but not deposited until June 18, 2001.

(h) Had no system in place for regularly monitoring her compliance with the Real Estate Law or for the supervision of her eleven real estate salespersons and including real estate broker Phil Phillips, in violation of Regulation 2725.

(i) Failed to maintain a signed broker salesperson agreement with real estate broker Phil Phillips, in violation of Section 2726 of the Regulations;

(j) Failed to notify the Department of the employment of two salespersons, Eddie Clay and Charles Baines, and the termination of five salespersons, Cedric Render, Marsha Slaughter, Charles Thompson, Valerie Valentine and Sandra Latty, in violation of Code Section 10161.8 and Regulation 2752.

(k) Failed to retain the salesperson license certificates for Sandra Kahara, Aleshia Stephens and Corenthia Thompson, in violation of Code Section 10160 and Regulation 2753.

8.

The conduct of Respondent PHILLIPS, described in Paragraph 8, above, violated the Code and the Regulations as set forth below:

PARAGRAPH

PROVISIONS VIOLATED

7(a)

Code Section 10145 and Regulations 2832.1, 2950(g) and 2951

7(b)

Code Section 10145 and Regulations 2831, 2950(g) and 2951

1	7(c)	Code Section 10145 and Regulations
2		2831.1, 2950(d) and 2951
3	7(d)	Code Section 10145 and Regulations
4		2831.2, 2950(d) and 2951
5	7(e)	Code Section 10145 and Regulation
6		2835(b), 2950(d) and 2951
7	7(f)	Code Section 10145 and Regulation
8		2934
9	7(g)	Regulation 2950(f)
10	7(h)	Regulation 2725
11	7(i)	Regulation 2726
12		
13	7(j)	Code Section 10161.8 and Regulation
14		2752
15	7(k)	Code Section 10160 and Regulation
16		2753

17 The foregoing violation constitutes cause for the suspension or
18 revocation of the real estate license and license rights of
19 PHILLIPS under the provisions of Code Sections 10177(d) and/or
20 10177(g).

21 9.

22 The overall conduct of Respondent PHILLIPS constitutes
23 negligence or incompetence. This conduct and violation are cause
24 for the suspension or revocation of the real estate license and
25 license rights of Respondent PHILLIPS pursuant to Code Section
26 10177(g).

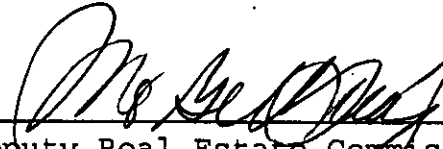
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1 ///

2 WHEREFORE, Complainant prays that a hearing be
3 conducted on the allegations of this Accusation and that upon
4 proof thereof, a decision be rendered imposing disciplinary
5 action against the license and license rights of Respondent
6 JIMISE JOYCE PHILLIPS dba Century 21 Universal, Universal Loans,
7 and Universal Realty, under the Real Estate Law (Part 1 of
8 Division 4 of the Business and Professions Code) and for such
9 other and further relief as may be proper under other applicable
10 provisions of law.
11

12 Dated at Los Angeles, California

13 this *13TH day of April 2004*.
14

15
16 
17 Deputy Real Estate Commissioner
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22
23

24 cc: Jimise Joyce Phillips
25 Maria Suarez
26 Sacto
27 JN
Audits