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KELVIN K. LEE, SBN 152867  
Department of Real Estate  
320 West 4th Street, Ste. 350  
Los Angeles, California 90013-1105  
  
Telephone: (213) 576-6905 (direct)  
-or- (213) 576-6982 (office)

**FILED**  
SEP 16 2005  
DEPARTMENT OF REAL ESTATE  
*Jana B. [Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of	)	DRE No. H-31703 LA
	)	OAH No. L-2005030699
JUAN CARLOS MUNOZ,	)	
	)	
Respondent.	)	<u>STIPULATION AND</u>
	)	<u>WAIVER AND DECISION</u>
	)	<u>AFTER REJECTION</u>
	)	

I, JUAN CARLOS MUNOZ, Respondent herein, acknowledge that I have received and read the Statement of Issues filed by the Department of Real Estate ("Department") on February 24, 2005, and the Statement to Respondent sent to me in connection with the Statement of Issues. Furthermore, I have received and read the Notice of Rejection filed on July 20, 2005.

I hereby admit that the allegations contained in the Statement of Issues filed against me on February 24, 2005, are true and correct and constitute a basis for the discipline of my real estate salesperson license.

I further acknowledge that the Real Estate Commissioner held a hearing on the Statement of Issues on May

1 26, 2005, before the Office of Administrative Hearings for the  
2 purpose of proving the allegations therein. I was present at  
3 the hearing and represented by Attorney Dennis G. Saab.  
4 Further, I have had an opportunity to read and review the  
5 Proposed Decision of the Administrative Law Judge dated June  
6 17, 2005, wherein it was determined that cause existed to deny  
7 my application for a real estate salesperson license, but which  
8 granted a right to apply for a restricted real estate  
9 salesperson license.

10 I understand that pursuant to Government Code Section  
11 11517(c), the Real Estate Commissioner has rejected the  
12 Proposed Decision of the Administrative Law Judge. I further  
13 understand that pursuant to the same Section 11517(c), the Real  
14 Estate Commissioner may decide this case upon the record,  
15 including the transcript, without taking any additional  
16 evidence, after affording me the opportunity to present written  
17 argument to the Real Estate Commissioner.

18 I further understand that by signing this Stipulation  
19 and Waiver After Rejection ("Stipulation and Waiver"), I am  
20 waiving my right to obtain a dismissal of the Statement of  
21 Issues filed February 24, 2005, through proceedings under  
22 Government Code Section 11517(c) if this Stipulation and Waiver  
23 is accepted by the Real Estate Commissioner. However, I also  
24 understand that I am not waiving my rights to further  
25 proceedings to obtain a dismissal of the Statement of Issues if  
26 this Stipulation and Waiver is not accepted by the Real Estate  
27 Commissioner.

1           IT IS HEREBY STIPULATED by and between Respondent and  
2 the Complainant, acting by and through Kelvin K. Lee, Counsel  
3 for the Department of Real Estate, as follows for the purpose  
4 of settling and disposing of the Statement of Issues.

5           A. It is understood by the parties that the Real  
6 Estate Commissioner may adopt the Stipulation and Waiver as his  
7 decision in this matter, thereby denying Respondent's application  
8 but granting a right to apply for a restricted conditional  
9 license, as set forth in the below Decision and "Order". In the  
10 event the Commissioner in his discretion does not adopt the  
11 Stipulation and Waiver, the Stipulation and Waiver shall be void  
12 and of no effect; the Commissioner will review the transcript and  
13 the evidence in the case, and will issue his Decision After  
14 Rejection as her decision in this matter.

15           B. By reason of the foregoing and solely for the  
16 purpose of settlement of the Statement of Issues without further  
17 administrative proceedings, it is stipulated and agreed that the  
18 Findings of Fact and Legal Conclusions, which are set out in the  
19 Proposed Decision, dated June 17, 2005, and which were rejected  
20 by the Commissioner on July 12, 2005, are hereby adopted and  
21 incorporated by reference.

22           C. By reason of the foregoing and solely for the  
23 purpose of settlement of the Statement of Issues without further  
24 administrative proceedings, it is stipulated and agreed the  
25 Commissioner shall adopt the following Order:

26       ///

27       ///



1           3. With the application for license, or with the  
2 application for transfer to a new employing broker, Respondent  
3 shall submit a statement signed by the prospective employing real  
4 estate broker on a form RE 552 (Rev. 1/99) approved by the  
5 Department which shall certify as follows:

6           (a) That the employing broker has read the Decision  
7 which is the basis for the issuance of the restricted license;  
8 and

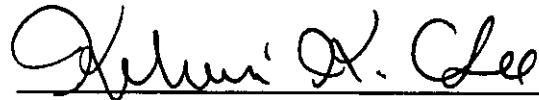
9           (b) That the employing broker will carefully review all  
10 transaction documents prepared by the restricted licensee and  
11 otherwise exercise close supervision over the licensee's  
12 performance of acts for which a license is required.

13           4. Respondent's restricted real estate salesperson  
14 license is issued subject to the requirements of Section 10153.4  
15 of the Business and Professions Code, to wit: Respondent shall,  
16 within eighteen (18) months of the issuance of the restricted  
17 license, submit evidence satisfactory to the Commissioner of  
18 successful completion, at an accredited institution, of two of  
19 the courses listed in Section 10153.2, other than real estate  
20 principles, advanced legal aspects of real estate, advanced real  
21 estate finance or advanced real estate appraisal. If Respondent  
22 fails to timely present to the Department satisfactory evidence  
23 of successful completion of the two required courses, the  
24 restricted license shall be automatically suspended effective  
25 eighteen (18) months after the date of its issuance. Said  
26  
27

1 suspension shall not be lifted unless, prior to the expiration of  
2 the restricted license, Respondent has submitted the required  
3 evidence of course completion and the Commissioner has given  
4 written notice to Respondent of lifting of the suspension.

5           5. Pursuant to Section 10154, if Respondent has not  
6 satisfied the requirements for an unqualified license under  
7 Section 10153.4, Respondent shall not be entitled to renew the  
8 restricted license, and shall not be entitled to the issuance of  
9 another license which is subject to Section 10153.4 until four  
10 years after the date of the issuance of the preceding restricted  
11 license.

12  
13 Dated: 8/18/05



KELVIN K. LEE  
Counsel for Complainant

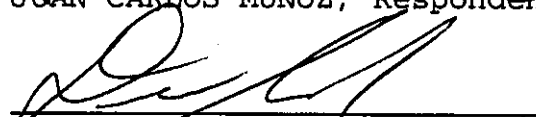
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15 \* \* \*

16           I have read the Stipulation and Waiver After Rejection.  
17 Its terms are agreeable and acceptable to me. I understand that  
18 I am waiving my rights given to me by the California  
19 Administrative Procedure Act (including but not limited to  
20 Section 11506, 11508, 11509 and 11513 of the Government Code),  
21 and I willing, intelligently, and voluntarily waive those rights.

22  
23 Dated: 8-12-05

  
JUAN CARLOS MUNOZ, Respondent.

24  
25 Dated: 8-12-05

  
DENNIS & SAAB, Counsel for  
Respondent

\* \* \*

1 I have read the Statement of Issues filed herein,  
2 the Proposed Decision of the Administrative Law Judge dated  
3 June 17, 2005, and the foregoing Stipulation and Waiver After  
4 Rejection signed by Respondent. I am satisfied that it will not  
5 be inimical to the public interest to issue a restricted real  
6 estate salesperson license to Respondent.

7  
8 Therefore, IT IS HEREBY ORDERED that Respondent's  
9 application for a real estate salesperson license be denied but a  
10 restricted real estate salesperson license be issued to  
11 Respondent JUAN CARLOS MUNOZ if Respondent has otherwise  
12 fulfilled all of the statutory requirements for licensure. The  
13 restricted license shall be limited, conditioned and restricted  
14 as specified in the foregoing Stipulation and Waiver After  
15 Rejection.

16 This Order shall become effective at 12 o'clock noon on  
17 OCT - 6 2005, 2005.

18  
19 IT IS SO ORDERED , 2005.

20 JEFF DAVI  
21 Real Estate Commissioner  
22   
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*Sacto. plan*

**FILED**  
JUL 20 2005  
DEPARTMENT OF REAL ESTATE

By *Laura B. Jim*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of )	
JUAN CARLOS MUNOZ,	No. H-31703 LA
Respondent.	L-2005030699

NOTICE

TO: JUAN CARLOS MUNOZ, Respondent, and DENNIS G. SAAB, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated June 17, 2005, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated June 17, 2005, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on May 26,

///



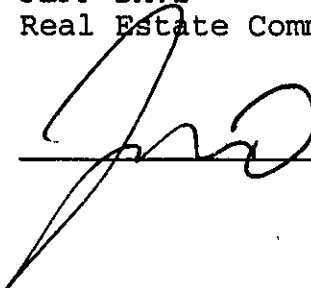
1 2005, and any written argument hereafter submitted on behalf of  
2 Respondent and Complainant.

3           Written argument of Respondent to be considered by me  
4 must be submitted within 15 days after receipt of the transcript  
5 of the proceedings of May 26, 2005, at the Los Angeles office of  
6 the Department of Real Estate unless an extension of the time is  
7 granted for good cause shown.

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

13                                 9-12-  
DATED: \_\_\_\_\_, 2005

14  
15   JEFF DAVI  
Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

Case No. H-31703 LA

JUAN CARLOS MUNOZ,

OAH Case No. L2005030699

Respondent.

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**PROPOSED DECISION**

This matter came on regularly for hearing before Mark T. Roohk, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California on May 26, 2005.

Kelvin Lee, Real Estate Counsel, represented Complainant Maria Suarez (Complainant).

Dennis G. Saab, Attorney at Law, appeared on behalf of Respondent Juan Carlos Munoz (Respondent), who was present throughout the hearing.

Oral and documentary evidence was received, the matter argued, the record was closed at the conclusion of the hearing and the case submitted for decision.

**FACTUAL FINDINGS**

1. Complainant Maria Suarez, Deputy Real Estate Commissioner of the State of California, made and filed the Statement of Issues in this proceeding in her official capacity and not otherwise.

2. Respondent Juan Carlos Munoz filed an application with the Department of Real Estate (Department) on or about November 12, 2003, for the issuance of a Real Estate Salesperson License in accordance with the provisions of Business and Professions Code section 10153.4. The application was denied. Respondent appealed the denial, and this hearing followed.

3. On August 1, 2000, Respondent was convicted in case number OPM02499 of the Superior Court of California, County of Los Angeles, on his plea of nolo contendere to one count of violating Vehicle Code section 23152, subdivision (a) (driving while under the influence of alcohol). The incident underlying this conviction occurred on March 20, 2000. Respondent was placed on formal probation for three years under certain terms and conditions, including participation in a first time offender alcohol education program, restrictions on his driver's license, and payment of various fines, fees, and assessments. (Exhibit 4.)

4. Respondent did not timely satisfy certain conditions of his probation, due in part to financial problems that prevented payment of some of the fees and assessments. As a result, Respondent's probation was extended almost two years by order of the court. (Exhibit 4.) Ultimately, Respondent did satisfy the terms of his probation, including not only completion of the first offender program but also weekly participation in Alcoholics Anonymous for six weeks. Respondent subsequently filed a petition under Penal Code section 1203.4 for dismissal of this conviction. That petition was granted by the court, and the conviction was dismissed on May 5, 2005. (Exhibits A and B.)

5. This conviction is found to be substantially related to the qualifications, functions, and duties of a real estate salesperson when considered together with the conviction described below in Factual Finding 6, pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(11).

6. On October 31, 2000, Respondent was convicted in case number VA062122 of the Superior Court of California, County of Los Angeles, on his plea of nolo contendere to one count of violating Penal Code section 484, subdivision (a) (petty theft), a crime that is substantially related to the qualifications, functions, and duties of a real estate salesperson. Respondent was placed on summary probation for three years under certain terms and conditions, including 18 days in county jail, and payment of fines and fees. (Exhibit 5.)

7. The facts and circumstances underlying this conviction are as follows: on October 20, 2000, Respondent and a friend purchased beer from a supermarket, and also took one bottle of rum with them that they did not pay for. One of the supermarket employees caught them as they exited the store, and a confrontation ensued wherein Respondent behaved in an aggressive and threatening manner.

8. Respondent satisfied all terms of his probation for this conviction. He subsequently filed a petition under Penal Code section 1203.4 for its dismissal. That petition was granted by the court, and the conviction was dismissed on April 28, 2005. (Exhibits C and D.)

9. Respondent accepts full responsibility for the conviction set forth in Factual Finding 3. As to the conviction set forth in Factual Findings 6 and 7, Respondent denies that he tried to steal anything from the supermarket, and testified that he was unaware that anything had been stolen until the confrontation with the store employee occurred.

Respondent testified that he accepted the plea agreement because he wished to be released from jail and have the criminal process come to an end.

10. Although Respondent denies responsibility for the second conviction, he admits that during the period of time in which both convictions occurred he was associating with the "wrong" kind of people and was drinking too much alcohol. After the convictions he reflected on his behavior and resolved to make some changes. He quit drinking alcohol at the end of 2002 and has been sober since. He also decided to pursue a career in real estate, a profession in which many of his family members currently work. For the past few months he has been employed as an assistant to Rene Saucedo, a licensed salesperson who works for Coldwell Banker. If he obtains his license, he plans to go to work as an agent in a Century 21 office owned by his uncle, David Sarinana.

11. Respondent has the support of family and friends, many of whom as noted above work in real estate. Letters were submitted on his behalf by his mother (Exhibit E), relatives who are licensed as salespersons (Exhibits H, J, and K), other licensed salespersons (Exhibits F, G, I, and L), and the pastor of Respondent's church (Exhibit M). All the letters attest to Respondent's character, values, and work ethic. In addition, three of the writers—Saucedo, Maximiliano Gomez Jr., and Ruben Sarinana Jr., all of whom are licensed salespersons—also testified on Respondent's behalf at the hearing, each reiterating what he wrote in his letter.

12. Respondent is single, and resides with his parents. He is actively involved in his church, and also participates in a scouting-type program for boys at another church as a volunteer.

### LEGAL CONCLUSIONS

Cause exists to deny Respondent's application for a real estate salesperson's license pursuant to the provisions of Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), for conviction of crimes substantially related to the qualifications, functions, and duties of a real estate salesperson, as set forth in Factual Findings 3, 4, 5, 6, and 7.

As part of the regulations governing the practice of real estate in the State of California, the Department has developed certain criteria, set forth in the California Code of Regulations, title 10, Section 2911, for the purpose of evaluating the rehabilitation of an applicant in considering whether or not to deny the issuance of a license on account of a conviction. As applied to this case, the criteria assist in the process of evaluating evidence of rehabilitation submitted by the Respondent.

A review of those criteria applicable to the facts of this case reveals the following:

A. The Guidelines recommend the passage of not less than two (2) years since the most recent criminal conviction. Respondent's convictions occurred in August and

October 2000, almost five (5) years ago. Further, these are Respondent's only convictions, and he fully disclosed both of them on his application and other documents required by the Department.

B. The Guidelines recommend considering payment of restitution. Respondent has made all payments required of him by the court.

C. The Guidelines recommend considering successful completion or early termination of probation. As to the earlier conviction, Respondent failed to timely comply with all terms of his probation, and as a result had his probation extended almost two years. However, Respondent ultimately did complete all terms of that probation. There is no evidence of any modifications or violations as to Respondent's second conviction.

D. The Guidelines recommend considering any expungement of convictions. Respondent has been granted expungement of both of his convictions.

E. The Guidelines recommend considering abstinence from the use of alcohol for not less than two (2) years if the conduct which is the basis for denial can be at least partly attributed to its use. Both of Respondent's convictions involve alcohol in some way, and Respondent quit drinking alcohol at the end of 2002, more than two (2) years ago.

F. The Guidelines recommend considering completion of formal education or vocational training courses since the time of conviction. Respondent decided to pursue a career in real estate after his convictions, and has made sufficient progress in his training and education to be in a position at this time to obtain a salesperson's license.

G. The Guidelines recommend considering significant or conscientious involvement in community or church programs designed to provide social benefits. Respondent is an active member of his church, and volunteers his time to a scouting type program for boys at another church.

The Guidelines also recommend considering changes in social relationships since the time of conviction, and in Respondent's attitude. Respondent's testimony indicates that he has changed his social relationships, and the testimony and letters presented by Respondent's family members, friends, and employer indicate that he has clearly changed his attitude in the years following his conviction. Overall, the evidence tends to establish that Respondent's past misconduct that resulted in his convictions is not indicative of his current general character.

As set forth above, Respondent has generally satisfied the applicable criteria for rehabilitation. The only exceptions involve Respondent's failure to timely complete his first probation, which resulted in the court extending that probation for two years, and his denial of responsibility for his second conviction, which is not supported by any other evidence. However, given the rest of the evidence presented, all of which establish

Respondent's rehabilitation, these concerns are not enough to require denial of Respondent's application for licensure as a real estate salesperson. Accordingly, it would not be against the public interest for the Department to issue a salesperson's license to Respondent. However, given the concerns expressed above, it would be most appropriate if Respondent were issued that license with terms and conditions.

### ORDER

The application of Respondent Juan Carlos Munoz for a real estate salesperson license is denied; however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code, as well as to the following limitations, conditions, and restrictions:

1. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within 18 months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance, or advanced real estate appraisal. If Respondent fails to present satisfactory evidence of successful completion of said courses, the restricted license shall be automatically suspended effective 18 months after issuance. Said suspension shall not be lifted until Respondent has submitted the required proof of course completion and the Commissioner has given written notice to Respondent of the lifting of the suspension.

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

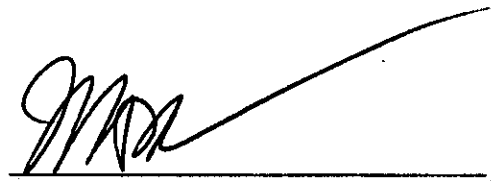
3. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing broker on a form approved by the Department of Real Estate, which shall certify:

a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

*Not  
adopted*

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

DATED: 6/17/05



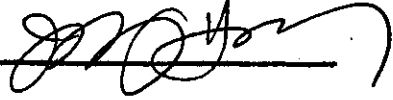
MARK T. ROOHK  
Administrative Law Judge  
Office of Administrative Hearings

7/20/07

1 KELVIN K. LEE, Real Estate Counsel (SBN 152867)  
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3 320 West 4th Street, Suite 350  
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982  
6 (Direct) (213) 576-6905

**FILED**  
FEB 24 2005  
DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

12	In the Matter of the Application of	)	NO. H-31703 LA
13	JUAN CARLOS MUNOZ	)	<u>STATEMENT OF ISSUES</u>
14		)	
15	Respondent.	)	

16 The Complainant, Maria Suarez, a Deputy Real Estate  
17 Commissioner of the State of California, for cause of Statement  
18 of Issues against JUAN CARLOS MUNOZ, ("Respondent"), is informed  
19 and alleges as follows:

20 I

21 The Complainant, Maria Suarez, a Deputy Real Estate  
22 Commissioner of the State of California, makes this Statement  
23 of Issues against Respondent in her official capacity.

24 ///  
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II

1 Respondent made application to the Department of Real  
2 Estate of the State of California for a real estate salesperson  
3 license on or about November 19, 2003, with the knowledge and  
4 understanding that any license issued as a result of said  
5 application would be subject to the conditions of Business and  
6 Professions Code ("Code") Section 10153.4.  
7

8 III

9 (CRIMINAL CONVICTIONS)

10 On or about August 1, 2000 in the Superior Court of  
11 California, Los Angeles County in Case No. OPM02499, Respondent  
12 JUAN CARLOS MUNOZ, was convicted of one (1) count of violating  
13 California Vehicle Code 23152, subdivision (b), (Driving While  
14 Having a 0.08 Percent or Higher Blood Alcohol Level). This is a  
15 crime involving moral turpitude which is substantially related  
16 under Title 10, Chapter 6, Section 2910, California Code of  
17 Regulations, to the qualifications, functions or duties of a  
18 real estate licensee.  
19

20 IV

21 On or about October 31, 2000, in the Superior Court of  
22 California, Los Angeles County in Case No. VA062122, Respondent  
23 JUAN CARLOS MUNOZ, was convicted of one (1) count of violating  
24 California Penal Code 484, subdivision (a) (Petty Theft). This is  
25 a crime involving moral turpitude which is substantially related  
26 under Title 10, Chapter 6, Section 2910, California Code of  
27 Regulations, to the qualifications, functions or duties of a

1 real estate licensee.

2 V

3 The crimes of which Respondent was convicted, as  
4 alleged herein above in Paragraphs III and IV, constitute cause  
5 for denial of Respondent's application for a real estate license  
6 under Code Sections 475(a)(2), 480(a)(1) and/or 10177(b).

7 The Statement of Issues is brought under the  
8 provisions of Section 10100, Division 4 of the Business and  
9 Profession Code of the State of California and Sections 11500  
10 through 11528 of the Government Code.

11 WHEREFORE, Complainant prays that the above entitled  
12 matter be set for hearing and, upon proof of the charges  
13 contained herein, that the Commissioner refuse to authorize the  
14 issuance of, and deny the issuance of, a real estate salesperson  
15 license to Respondent, JUAN CARLOS MUNOZ, and for such other and  
16 further relief as may be proper under other provisions of law.

17 Dated at Los Angeles, California

18 this 20th day of February, 2005.

19  
20  
21   
22 Maria Suarez  
23 Deputy Real Estate Commissioner

24 cc: JUAN CARLOS MUNOZ  
25 Sarinana Inc./David Sarinana  
26 Maria Suarez  
27 Sacto.  
GD