

Sachs

FILED

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

JAN 18 2008

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

DEPARTMENT OF REAL ESTATE
BY: *Sachs*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 MAXIMUM PROPERTY MANAGEMENT INC.;)
14 and JORGE PERCIVAL NEWBERRY,)
15 individually and as designated)
16 officer of Maximum Property)
17 Management Inc.)
18)
19)
20 Respondents,)
21)
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No. H-32973 LA
STIPULATION
AND
AGREEMENT

18 It is hereby stipulated by and between Respondents
19 MAXIMUM PROPERTY MANAGEMENT INC., a corporate real estate broker,
20 and JORGE PERCIVAL NEWBERRY, individually and as designated
21 officer of Maximum Property Management Inc. (sometimes
22 collectively referred to as "Respondents"), and the Complainant,
23 acting by and through Elliott Mac Lennan, Counsel for the
24 Department of Real Estate, as follows for the purpose of settling
25 and disposing of the Accusation ("Accusation") filed on June 12,
26 2006, in this matter:
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1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and Respondents
3 at a formal hearing on the Accusation, which hearing was to be
4 held in accordance with the provisions of the Administrative
5 Procedure Act ("APA"), shall instead and in place thereof be
6 submitted solely on the basis of the provisions of this
7 Stipulation and Agreement ("Stipulation").

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

12 3. Respondents timely filed a Notice of Defense
13 pursuant to Section 11506 of the Government Code for the purpose
14 of requesting a hearing on the allegations in the Accusation.
15 Respondents hereby freely and voluntarily withdraw said Notice of
16 Defense. Respondents acknowledge that they understand that by
17 withdrawing said Notice of Defense they thereby waive their right
18 to require the Commissioner to prove the allegations in the
19 Accusation at a contested hearing held in accordance with the
20 provisions of the APA and that they will waive other rights
21 afforded to them in connection with the hearing such as the right
22 to present evidence in their defense the right to cross-examine
23 witnesses.
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25 4. This Stipulation is based on the factual
26 allegations contained in the Accusation. In the interest of
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1 expedience and economy, Respondents choose not to contest these
2 allegations, but to remain silent and understand that, as a
3 result thereof, these factual allegations, without being admitted
4 or denied, will serve as a prima facie basis for the disciplinary
5 action stipulated to herein. The Real Estate Commissioner shall
6 not be required to provide further evidence to prove said factual
7 allegations.

8 5. This Stipulation and Respondents' decision not to
9 contest the Accusation is made for the purpose of reaching an
10 agreed disposition of this proceeding and is expressly limited to
11 this proceeding and any other proceeding or case in which the
12 Department of Real Estate ("Department"), the state or federal
13 government, or any agency of this state, another state or federal
14 government is involved, and otherwise shall not be admissible in
15 any other criminal or civil proceedings.

16 6. It is understood by the parties that the Real
17 Estate Commissioner may adopt this Stipulation as his Decision in
18 this matter thereby imposing the penalty and sanctions on
19 Respondents' real estate licenses and license rights as set forth
20 in the "Order" herein below. In the event that the Commissioner
21 in his discretion does not adopt the Stipulation, it shall be
22 void and of no effect and Respondents shall retain the right to a
23 hearing and proceeding on the Accusation under the provisions of
24 the APA and shall not be bound by any stipulation or waiver made
25 herein.
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1 7. The Order or any subsequent Order of the Real
2 Estate Commissioner made pursuant to this Stipulation shall not
3 constitute an estoppel, merger or bar to any further
4 administrative or civil proceedings by the Department of Real
5 Estate with respect to any matters which were not specifically
6 alleged to be causes for Accusation in this proceeding but do
7 constitute a bar, estoppel and merger as to any allegations
8 actually contained in the Accusations against Respondents herein.

9 8. Respondents understand that by agreeing to this
10 Stipulation, Respondents agree to pay, pursuant to Business and
11 Professions Code Section 10148, the cost of audit which led to
12 this disciplinary action. The amount of said cost for the audit
13 is \$2,931.

14 9. Respondents have received, read, and understand the
15 "Notice Concerning Costs of Subsequent Audit". Respondents
16 further understand that by agreeing to this Stipulation, the
17 findings set forth below in the Determination of Issues become
18 final, and the Commissioner may charge Respondents for the cost
19 of any subsequent audit conducted pursuant to Business and
20 Professions Code Section 10148 to determine if the violations
21 have been corrected. The maximum cost of the subsequent audit
22 will not exceed \$2,931.

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DETERMINATION OF ISSUES

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

4 The conduct of MAXIMUM PROPERTY MANAGEMENT INC., as
5 described in Paragraph 4, above, is in violation of Section 10145
6 of the Business and Professions Code ("Code") and Sections 2831,
7 2832 and 2834 of Title 10, Chapter 6 of the California Code of
8 Regulations ("Regulations") and is a basis for the suspension or
9 revocation of Respondent's license and license rights as a
10 violation of the Real Estate Law pursuant to Code Sections
11 10177(d) and 10177(g).
12

II.

13 The conduct of JORGE PERCIVAL NEWBERRY, as described in
14 Paragraph 4, constitutes a failure to keep Maximum Property
15 Management Inc. in compliance with the Real Estate Law during the
16 time that he was the officer designated by a corporate broker
17 licensee in violation of Code Sections 10145 and 10159.2 and
18 Regulations 2831, 2832 and 2834. This conduct is a basis for the
19 suspension or revocation of Respondent's license pursuant to Code
20 Sections 10177(d), 10177(g) and 10177(h).
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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All licenses and licensing rights of Respondents

MAXIMUM PROPERTY MANAGEMENT INC., as and JORGE PERCIVAL NEWBERRY

under the Real Estate Law are suspended for a period of ninety
days from the effective date of this Decision; provided, however,
that if Respondents request, the initial thirty days of said
suspension (or a portion thereof) shall be stayed upon condition
that:

A 1. Respondents each pay a monetary penalty pursuant
to Section 10175.2 of the Business and Professions Code at the
rate of \$100.00 per day for each day of the suspension for a
monetary penalty of \$3,000 each or a total monetary penalty of
\$6,000.

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

3. No further cause for disciplinary action against
the real estate licenses of Respondents occurs within two years
from the effective date of the Decision in this matter.

4. If Respondents fail to pay the monetary penalty in
accordance with the terms of the Decision, the Commissioner may,

1 without a hearing, order the immediate execution of all or any
2 part of the stayed suspension, in which event the Respondents
3 shall not be entitled to any repayment nor credit, prorated or
4 otherwise, for money paid to the Department under the terms of
5 this Decision.

6 5. If Respondents pay the monetary penalty and if no
7 further cause for disciplinary action against the real estate
8 license of Respondent occurs within two years from the effective
9 date of the Decision, the stay hereby granted shall become
10 permanent

11 B. The remaining sixty days of the ninety day
12 suspension shall be stayed for two years upon the following terms
13 and conditions:

14 (a) Respondents shall obey all laws, rules and
15 regulations governing the rights, duties and responsibilities of
16 a real estate licensee in the State of California; and

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

Pursuant to Section 10148 of the Business and

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3 Professions Code, Respondents MAXIMUM PROPERTY MANAGEMENT INC.
4 and JORGE PERCIVAL NEWBERRY shall pay the Commissioner's
5 reasonable cost for (a) the audit which led to this disciplinary
6 action (b) a subsequent audit to determine if Respondents are now
7 in compliance with the Real Estate Law. The cost of the audit
8 which led to this disciplinary action is \$2,931. In calculating
9 the amount of the Commissioner's reasonable cost, the
10 Commissioner may use the estimated average hourly salary for all
11 persons performing audits of real estate brokers, and shall
12 include an allocation for travel time to and from the auditor's
13 place of work. Said amount for the prior and subsequent audits
14 shall not exceed \$5,862.

15
16 Respondents shall pay such cost within 60 days of
17 receiving an invoice from the Commissioner detailing the
18 activities performed during the audit and the amount of time
19 spent performing those activities.

20 The Commissioner may suspend the license of Respondents
21 pending a hearing held in accordance with Section 11500, et seq.,
22 of the Government Code, if payment is not timely made as provided
23 for herein, or as provided for in a subsequent agreement between
24 the Respondent and the Commissioner. The suspension shall remain
25 in effect until payment is made in full or until Respondents
26 enter into an agreement satisfactory to the Commissioner to
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1 provide for payment, or until a decision providing otherwise is
2 adopted following a hearing held pursuant to this condition.

3 IV.

4 Respondent JORGE PERCIVAL NEWBERRY shall within six (6)
5 months from the effective date of the Decision herein, take and
6 pass the Professional Responsibility Examination administered by
7 the Department including the payment of the appropriate
8 examination fee. If Respondent fails to satisfy this condition,
9 the Commissioner may order suspension of Respondent's license
10 until Respondent passes the examination.

11 V.

12 All licenses and licensing rights of Respondent JORGE
13 PERCIVAL NEWBERRY are indefinitely suspended unless or until
14 Respondent provides proof satisfactory to the Commissioner, of
15 having taken and successfully completed the continuing education
16 course on trust fund accounting and handling specified in
17 paragraph (3) of subdivision (a) of Section 10170.5 of the
18 Business and Professions Code. Proof of satisfaction of this
19 requirement includes evidence that respondent has successfully
20 completed the trust fund account and handling continuing
21 education course within 120 days prior to the effective date of
22 the Decision in this matter.

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VI.

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During the two year period set forth above, Respondent
JORGE PERCIVAL NEWBERRY shall not serve as the designated officer
for any corporate real estate broker unless and until Respondent
is the owner of record of the controlling shares of the
corporation.

DATED: 12-11-06

E.L.
ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

* * *

EXECUTION OF THE STIPULATION

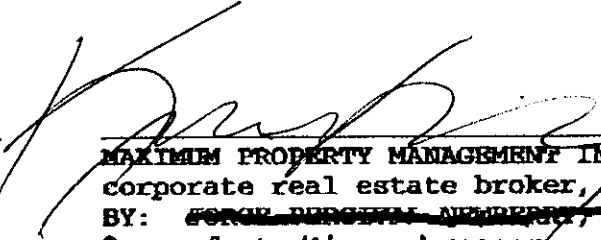
We have read the Stipulation. Its terms are understood
by us and are agreeable and acceptable to us. We understand that
we are waiving rights given to us by the California
Administrative Procedure Act (including but not limited to
Sections 11506, 11508, 11509 and 11513 of the Government Code),
and we 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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1 Respondents can signify acceptance and approval of the
2 terms and conditions of this Stipulation by faxing a copy of its
3 signature page, as actually signed by Respondents, to the
4 Department at the following telephone/fax number: Elliott Mac
5 Lennan at (213) 576-6917. Respondents agree, acknowledge and
6 understand that by electronically sending to the Department a fax
7 copy of Respondents' actual signature as they appear on the
8 Stipulation, that receipt of the faxed copy by the Department
9 shall be as binding on Respondents as if the Department had
10 received the original signed Stipulation.

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DATED: 9-13-07


MAXIMUM PROPERTY MANAGEMENT INC., a
corporate real estate broker,
BY: ~~JORGE PERCIVAL NEWBERRY, ESQ.~~
Respondent Kinga Lovasz,
President

DATED: 7-17-07


JORGE PERCIVAL NEWBERRY
individually and as designated
~~officer of Maximum Property~~
~~Management Inc.~~ Respondent

7-28-07
5-17-07
DATED:



FRANK M. BUDA, ESQ.
Attorney At Law
Approved as to form

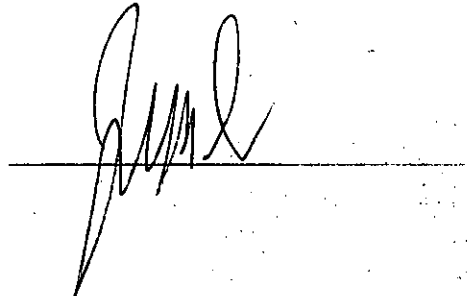
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The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondents MAXIMUM PROPERTY
MANAGEMENT INC. and JORGE PERCIVAL NEWBERRY, individually and as
designated officer of Maximum Property Management Inc. and shall
become effective at 12 o'clock noon on February 18, 2008.

IT IS SO ORDERED 1-2, 2008.

JEFF DAVI
Real Estate Commissioner



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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
JUN 12 2006
DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-32973 LA
)	
MAXIMUM PROPERTY MANAGEMENT INC.; and)	<u>A C C U S A T I O N</u>
JORGE PERCIVAL NEWBERRY, individually))	
and as designated officer of Maximum))	
Property Management Inc.)	
)	
Respondents.)	
)	
)	
)	

The Complainant, Janice Waddell, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against MAXIMUM PROPERTY MANAGEMENT INC., and JORGE PERCIVAL NEWBERRY, individually and as designated officer of Maximum Property Management Inc., alleges as follows:

1.

The Complainant, Janice Waddell, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California makes this Accusation against MAXIMUM PROPERTY

1 MANAGEMENT INC., ("MPMI") and JORGE PERCIVAL NEWBERRY

2 ("NEWBERRY").

3 2.

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

7 3.

8 MPMI and NEWBERRY (hereinafter referred to as
9 Respondents) are presently licensed and/or have license rights
10 under the Real Estate Law (Part 1 of Division 4 of the Business
11 and Professions Code).

12 LICENSE HISTORY

13 4.

14 At all mentioned times, NEWBERRY was licensed by the
15 Department as designated officer of MPMI to qualify MPMI and to
16 act for MPMI as a real estate broker and, as provided by Section
17 10159.2 of the Code, was responsible for the supervision and
18 control of the activities conducted on MPMI's behalf by MPMI's
19 officers, managers and employees as necessary to secure full
20 compliance with the provisions of the Real Estate Law including
21 the supervision of the salespersons licensed to the corporation
22 in the performance of acts for which a real estate license is
23 required. NEWBERRY was originally licensed as a real estate
24 broker on June 25, 1992. MPMI was originally licensed as a
25 corporate real estate broker on March 12, 2003.
26

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5.

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2 Whenever reference is made in an allegation in the
3 Accusation to an act or omission of MPMI such allegation shall be
4 deemed to mean that the officers, directors, managers, employees,
5 agents and real estate licensees employed by or associated with
6 MPMI including NEWBERRY committed such act or omission while
7 engaged in the furtherance of MPMI's business or operation and
8 while acting within the course and scope of MPMI's corporate
9 authority, agency and employment.

10 6.

11 At all times mentioned, in the City of Sherman Oaks,
12 Los Angeles County, MPMI acted as a real estate broker by
13 operating a property management brokerage, within the meaning of
14 Code Section 10131(b).

15 FIRST CAUSE OF ACTION

16 (Audit violations)

17 7.

18
19 On October 4, 2004, the Department completed an audit
20 examination of the books and records of MPMI pertaining to the
21 property management activities described in Paragraph 6 that
22 require a real estate license. The audit examination covered a
23 period of time beginning on March 12, 2002 through July 30, 2004.
24 The audit examination revealed violations of the Code and the
25 Regulations as set forth in the following paragraphs, and more
26 fully discussed in Audit Report LA 040008 and the exhibits and
27

workpapers attached to said audit report.

8.

At all times mentioned, in connection with the activities described in Paragraph 6, above, MPMI accepted or received funds in trust (trust funds) from or on behalf of various properties and thereafter made disposition of such funds. MPMI maintained approximately one hundred twenty trust accounts during the audit period and into which were deposited certain of these funds from the seven (7) trust accounts scheduled for audit at the City National of Sherman Oaks and Beverly Hills,

California:

"Allen BWB, LLC Bank Account (B/A #1)
Account No. 0412896769"

"Charles J. Weingarten, John T. Walker, Kinga A. Lovasz Bank
Account (B/A #2)
Account No. 0112113991"

"The David & Rochelle Wong Rev. Trust David H. Wong Trustee Bank
Account (B/A #3)
Account No. 0412884884"

"2050 FP BWB, LLC Bank Account (B/A #4)
Account No. 0412896777"

"John T. Walker, Charles J. Weingarten, Kinga A. Lovasz
'Vineland Villa' Bank Account (B/A #5)
Account No. 0112114009"

"Graham E. Sanchez, Kinga A. Lovasz Bank Account (B/A #6)
Account No. 0412884124"

"Stocker BWB, LLC Bank Account (B/A #7)
Account No. 0412896785"

With respect to the activities referred to in Paragraphs 6 and 8, and during the examination period described in Paragraph 7, it is alleged that MPMI and NEWBERRY:

(a) Failed to maintain an adequate and complete control record in the form of a columnar record in chronological order of all trust funds received and disbursed from B/A #1, B/A #2 and B/A #3, as required by Code Section 10145 and Regulation 2831.

(b) Failed to place funds, including rent receipts, into a trust fund account in the name of the broker as trustee at a bank or other financial, as required by Code Section 10145 and Regulation 2832. None of the seven bank accounts, B/A #1 - B/A #7, were in the name of the broker and designated as trust accounts.

(c) (1) Permitted Kinga A. Lovasz, MPMI's owner and President, an unlicensed person, who was not bonded, to be an authorized signatory on all seven bank accounts, B/A #1 - B/A #7, in violation of Code Section 10145 and Regulation 2834;

(c) (2) Permitted the owners and/or trustees of owners, who were unlicensed persons, who were not bonded, to be authorized signatories on all seven bank accounts, B/A #1 - B/A #7, in violation of Code Section 10145 and Regulation 2834; and

1 (c) (3) NEWBERRY could not sign on any of the seven bank
2 account of MPMI, in violation of Code Section 10145 and
3 Regulation 2834.

4 10.

5 The conduct of Respondent MPMI and NEWBERRY, described
6 in Paragraph 9 violated the Code and the Regulations as set forth
7 below:

8 PARAGRAPH

PROVISIONS VIOLATED

9
10 9 (a)

Code Section 10145 and
Regulation 2831

11
12 9 (b)

Code Section 10145 and
Regulation 2832

13
14
15 9 (c)

Code Section 10145 and
Regulation 2834

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18 The foregoing violations constitute cause for the suspension or
19 revocation of the real estate license and license rights of MPMI
20 and NEWBERRY under the provisions of Code Section 10177(d) and/or
21 10177(g).

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PRIOR DEPARTMENTAL ACTION

11.

On July 16, 2002, in Case No. H-29597 LA, an ORDER TO DESIST AND REFRAIN was filed against respondent MAXIMUM PROPERTY MANAGEMENT INC., under Section 10086 of the Code (Engaging in Prohibited Activity, Order to Desist and Refrain) for violation of Code Section 10130, based upon Kinga A. Lovasz' unlicensed property management activities.

SECOND CAUSE OF ACTION

(Negligence)

12.

The overall conduct of NEWBERRY constitutes negligence and/or incompetence. This conduct is cause for the suspension or revocation of the real estate license and license rights of NEWBERRY pursuant to the provisions of Code Section 10177(g).

THIRD CAUSE OF ACTION

(Failure to supervise)

13.

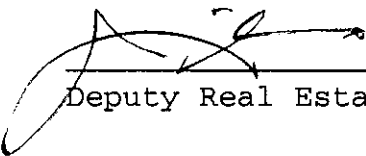
The overall conduct of NEWBERRY constitutes a failure on his part, as officer designated by a corporate broker licensee, responsible for the supervision and control over the activities conducted on behalf of NEWBERRY by its officers, managers and employees as necessary to secure full compliance with the provisions of the Real Estate Law including the supervision of the salespersons licensed to the corporation in

1 the performance of acts for which a real estate license is
2 required. This conduct is in violation of Code Section 10159.2
3 and is cause for the suspension or revocation of the real estate
4 license and license rights of NEWBERRY pursuant to the provisions
5 of Code Sections 10177(h), 10177(d) and/or 10177(g).

6 WHEREFORE, Complainant prays that a hearing be
7 conducted on the allegations of this Accusation and that upon
8 proof thereof, a decision be rendered imposing disciplinary
9 action against the license and license rights of Respondents
10 MAXIMUM PROPERTY MANAGEMENT INC. and JORGE PERCIVAL NEWBERRY,
11 individually and as designated officer of Maximum Property
12 Management Inc., under the Real Estate Law (Part 1 of Division 4
13 of the Business and Professions Code) and for such other and
14 further relief as may be proper under other applicable provisions
15 of law.

16
17 Dated at Los Angeles, California

18 this *22 February 2006*

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22 _____
23 Deputy Real Estate Commissioner
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25 cc: Maximum Property Management Inc.
26 cc: Jorge Percival Newberry
27 Sacto
Janice Waddell