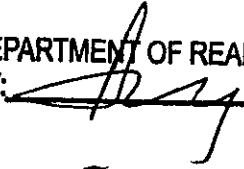


fact

1 Department of Real Estate
320 West 4th Street, Ste. 350
2 Los Angeles, California 90013-1105
3 Telephone: (213) 576-6982

FILED

MAY -4 2011

DEPARTMENT OF REAL ESTATE
BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 BANCORP REALTY, a corporate)
13 real estate broker, and)
14 FEDERICO JORGE TRIEBEL,)
15 Individually as designated)
16 officer of Bancorp Realty,)

No. H-35825 LA
L-2010020573

STIPULATION
AND
AGREEMENT

16 Respondents,)
17)

18
19 It is hereby stipulated by and between Respondents
20 BANCORP REALTY and FEDERICO JORGE TRIEBEL, individually and as
21 designated officer of Bancorp Realty, (sometimes collectively
22 referred to as "Respondents"), represented by Frank M. Buda, Esq.
23 and the Complainant, acting by and through Elliott Mac Lennan,
24 Counsel for the Department of Real Estate, as follows for the
25 purpose of settling and disposing of the Accusation
26 ("Accusation") filed on April 2, 2009, in this matter:

27 ///

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 and the right to cross-
23 examine witnesses.

24 4. This Stipulation is based on the factual
25 allegations contained in the Accusation. In the interest of
26 expedience and economy, Respondents choose not to contest these
27 allegations, but to remain silent and understand that, as a

1 result thereof, these factual allegations, without being admitted
2 or denied, will serve as a prima facie basis for the disciplinary
3 action stipulated to herein. The Real Estate Commissioner shall
4 not be required to provide further evidence to prove said factual
5 allegations.

6 5. This Stipulation is made for the purpose of
7 reaching an agreed disposition of this proceeding and is
8 expressly limited to this proceeding and any other proceeding or
9 case in which the Department of Real Estate ("Department"), the
10 state or federal government, or any agency of this state, another
11 state or federal 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 Respondents' real estate licenses 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 Respondents shall retain the right to a
19 hearing and proceeding on the Accusation under the provisions of
20 the APA and shall not be bound by any stipulation or waiver made
21 herein.

22 7. The Order or any subsequent Order of the Real
23 Estate Commissioner made pursuant to this Stipulation shall not
24 constitute an estoppel, merger or bar to any further
25 administrative or civil proceedings by the Department of Real
26 Estate with respect to any matters which were not specifically
27 alleged to be causes for Accusation in this proceeding but do

1 constitute a bar, estoppel and merger as to any allegations
2 actually contained in the Accusations against Respondent herein.

3 8. Respondents understand that by agreeing to this
4 Stipulation, Respondents agree to pay, pursuant to Business and
5 Professions Code Section 10148, the cost of the audit. The
6 amount of said cost for the audit is \$3,526.12.

7 9. Respondents have received, read, and understand the
8 "Notice Concerning Costs of Subsequent Audit". Respondents
9 further understand that by agreeing to this Stipulation, the
10 findings set forth below in the Determination of Issues become
11 final, and the Commissioner may charge Respondents for the cost
12 of any subsequent audit conducted pursuant to Business and
13 Professions Code Section 10148 to determine if the violations
14 have been corrected. The maximum cost of the subsequent audit
15 will not exceed \$3,526.12.

16 DETERMINATION OF ISSUES

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

19 I.

20 The conduct, acts or omissions of BANCORP REALTY and
21 FEDERICO JORGE TRIEBEL, as described in Paragraph 4, above, are
22 in violation of Sections 10145, 10238(a), 10238(f) and
23 10238(h)(3) of the Business and Professions Code ("Code") and
24 Sections 2831 and 2832(a) of Title 10, Chapter 6 of the
25 California Code of Regulations ("Regulations") and is a basis for
26 discipline of Respondents' license and license rights as
27 violation of the Real Estate Law pursuant to Code Sections

1 10177(d) and 10177(g).

2 II.

3 The conduct, acts or omissions of FEDERICO JORGE
4 TRIEBEL, as described in Paragraph 4, above, are in violation of
5 Code Section 10159.2 and is a basis for discipline of
6 Respondent's license and license rights as violation of the Real
7 Estate Law pursuant to Code Section 10177(h).

8 ORDER

9 WHEREFORE, THE FOLLOWING ORDER is hereby made:

10 I.

11 All license and licensing rights of Respondent BANCORP
12 REALTY are revoked.

13 II.

14 All licenses and licensing rights of Respondent
15 FEDERICO JORGE TRIEBEL under the Real Estate Law are suspended
16 for a period of ninety (90) days from the effective date of this
17 Decision.

18 A. Provided, however, that if Respondent requests, the
19 initial thirty (30) days of said suspension (or a portion
20 thereof) shall be stayed for two (2) years upon condition that:

21 1. Respondent pays a monetary penalty pursuant to
22 Section 10175.2 of the Business and Professions Code at the rate
23 of \$166.66 per day for each day of the suspension for a total
24 monetary penalty of \$5,000.

25 ///

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

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

9 4. If Respondent fails to pay the monetary penalty in
10 accordance with the terms of the Decision, the Commissioner may,
11 without a hearing, order the immediate execution of all or any
12 part of the stayed suspension, in which event the Respondent
13 shall not be entitled to any repayment nor credit, prorated or
14 otherwise, for money paid to the Department under the terms of
15 this Decision.

16 5. If Respondent pays the monetary penalty and if no
17 further cause for disciplinary action against the real estate
18 license of Respondent occurs within two (2) years from the
19 effective date of the Decision, the stay hereby granted shall
20 become permanent.

21 B. The remaining sixty (60) days of the ninety (90)
22 day suspension shall be stayed for two (2) years upon the
23 following terms and conditions:

24 1. Respondent shall obey all laws, rules and
25 regulations governing the rights, duties and responsibilities of
26
27

1 a real estate licensee in the State of California; and

2 2. That no final subsequent determination be made
3 after hearing or upon stipulation that cause for disciplinary
4 action occurred within two (2) years from the effective date of
5 this Decision. Should such a determination be made, the
6 Commissioner may, in his discretion, vacate and set aside the
7 stay order and reimpose all or a portion of the stayed
8 suspension. Should no such determination be made, the stay
9 imposed herein shall become permanent.

10 III.

11 Pursuant to Section 10148 of the Business and
12 Professions Code, Respondents BANCORP REALTY and FEDERICO JORGE
13 TRIEBEL shall pay the Commissioner's reasonable cost for (a) the
14 audit which led to this disciplinary action (b) a subsequent
15 audit to determine if Respondents are now in compliance with the
16 Real Estate Law. The cost of the audit which led to this
17 disciplinary action is \$3,526.12. In calculating the amount of
18 the Commissioner's reasonable cost, the Commissioner may use the
19 estimated average hourly salary for all persons performing audits
20 of real estate brokers, and shall include an allocation for
21 travel time to and from the auditor's place of work. Said amount
22 for the prior and subsequent audits shall not exceed \$7,052.24.

23 Respondents shall pay such cost within 60 days of
24 receiving an invoice from the Commissioner detailing the
25 activities performed during the audit and the amount of time
26 spent performing those activities.

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

10 IV.

11 All licenses and licensing rights of Respondent

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

22 V.

23 Respondent FEDERICO JORGE TRIEBEL shall within six (6)

24 months from the effective date of the Decision herein, take and
25 pass the Professional Responsibility Examination administered by
26 the Department including the payment of the appropriate
27 examination fee. If Respondent fails to satisfy this condition,

1 the Commissioner may order suspension of Respondent's license
2 until Respondent passes the examination.

3 VI.

4 Respondent FEDERICO JORGE TRIEBEL shall, within nine
5 (9) months from the effective date of this Decision, present
6 evidence satisfactory to the Real Estate Commissioner that
7 Respondent has, since the most recent issuance of an original or
8 renewal real estate license, taken and successfully completed the
9 continuing education requirements of Article 2.5 of Chapter 3 of
10 the Real Estate Law for renewal of a real estate license. If
11 Respondent fails to satisfy this condition, the Commissioner may
12 order the suspension of Respondent's license until Respondent
13 presents such evidence. The Commissioner shall afford Respondent
14 the opportunity for a hearing pursuant to the Administrative
15 Procedure Act to present such evidence.

16 VII.

17 During the two year period set forth in Paragraph
18 II.B., above, Respondent FEDERICO JORGE TRIEBEL shall not
19 originate or broker "covered loans" as that term is defined
20 pursuant to California Financial Code Section 4970(b).

21

22

23

24

25 DATED: 1-27-11

25 ELI
ELLIOTT MAC LENNAN, Counsel for
26 the Department of Real Estate

26

27

1 * * *

2 EXECUTION OF THE STIPULATION

3 We have read the Stipulation and discussed it with our
4 attorney. Its terms are understood by us and are agreeable and
5 acceptable to us. We understand that we are waiving rights given
6 to us by the California Administrative Procedure Act (including
7 but not limited to Sections 11506, 11508, 11509 and 11513 of the
8 Government Code), and we willingly, intelligently and voluntarily
9 waive those rights, including the right of requiring the
10 Commissioner to prove the allegations in the Accusation at a
11 hearing at which we would have the right to cross-examine
12 witnesses against us and to present evidence in defense and
13 mitigation of the charges.

14 MAILING AND FACSIMILE

15 Respondents (1) shall mail the original signed
16 signature page of the stipulation herein to Elliott Mac Lennan:
17 Attention: Legal Section, Department of Real Estate, 320 W.
18 Fourth St., Suite 350, Los Angeles, California 90013-1105.
19 Respondents shall also (2) facsimile a copy of signed signature
20 page, to the Department at the following telephone/fax number:
21 (213) 576-6917, Attention: Elliott Mac Lennan.

22 A facsimile constitutes acceptance and approval of the
23 terms and conditions of this stipulation. Respondents agree,
24 acknowledge and understand that by electronically sending to the
25 Department a facsimile copy of Respondents' actual signature as
26 it appears on the stipulation that receipt of the facsimile copy
27 by the Department shall be as binding on Respondents as if the

1 Department had received the original signed stipulation.

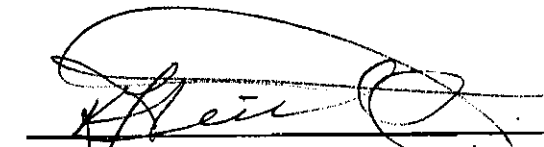
2

3

4

5

DATED: 1-27-2011



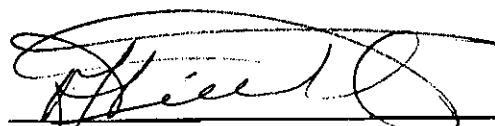
~~BANCORP REALTY, a corporate real~~
estate broker, Respondent
By: FEDERICO JORGE TRIEBEL, as
designated officer of Bancorp
Realty

10

11

12

DATED: 1-27-2011



~~FEDERICO JORGE TRIEBEL,~~
as designated officer of Bancorp
Realty,
Respondent

15

16

17

18

DATED: 1-27-11



FRANK M. BUDA, ESQ.
Attorney for Respondents
Approved as to form

19

20

21

///

22

///

23

///

24

///

25

///

26

///

27

///

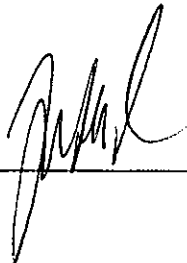
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondents BANCORP REALTY and
FEDERICO JORGE TRIEBEL, individually and as designated officer of
Bancorp Realty and shall become effective at 12 o'clock noon on
June 2, 2011.

IT IS SO ORDERED 3/1, 2011.

JEFF DAVI
Real Estate Commissioner



Sachs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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 - 2, 2009

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H- 35825 LA
)	
BANCORP REALTY, a corporate)	<u>A C C U S A T I O N</u>
real estate broker; and)	
FEDERICO JORGE TRIEBEL,)	
individually and as designated)	
officer of Bancorp Realty,)	
)	
Respondents.)	

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against BANCORP REALTY and FEDERICO JORGE TRIEBEL, individually and as designated officer of Bancorp Realty, alleges as follows:

1.

The Complainant, Robin Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against BANCORP REALTY (BANCORP) and FEDERICO JORGE TRIEBEL (TRIEBEL).

2.

1 All references to the "Code" are to the California
2 Business and Professions Code and all references to "Regulations"
3 are to Title 10, Chapter 6, California Code of Regulations unless
4 otherwise specified, including California Financial Code Sections
5 4970 - 4979 of the California Predatory Lending Law.
6

3.

7 A. At all times mentioned, BANCORP and TRIEBEL were
8 licensed or had license rights issued by the Department of Real
9 Estate (Department) as real estate brokers.
10

11 B. At all times material herein, BANCORP was licensed
12 by the Department as a corporate real estate broker on July 18,
13 2007, by and through TRIEBEL, originally licensed on January 16,
14 1997 as a real estate broker, pursuant to Code Sections 10211 and
15 10159.2 for supervising the activities requiring a real estate
16 license conducted on behalf of BANCORP.

4.

17 At all times mentioned, in the City and County of Los,
18 BANCORP and TRIEBEL acted as real estate brokers and conducted
19 licensed activities within the meaning of:
20

21 A. Code Section 10131(d). BANCORP and TRIEBEL
22 operated a mortgage and loan brokerage engaging in activities
23 with the public wherein lenders and borrowers were solicited for
24 loans secured directly or collaterally by liens on real property,
25 wherein such loans were arranged, negotiated, processed and
26 consummated on behalf of others for compensation or in
27

1 expectation of compensation and for fees often collected in
2 advance as well as at the conclusion of transactions; and

3 B. BANCORP and TRIEBEL conducted broker-controlled
4 escrows through its escrow division under the exemption set forth
5 in California Financial Code Section 17006(a)(4) for real estate
6 brokers performing escrows incidental to a real estate
7 transaction where the broker is a party and where the broker is
8 performing acts for which a real estate license is required.

9 5.

10 On January 29, 2009, the Department completed an audit
11 examination of the books and records of BANCORP pertaining to the
12 mortgage loan activities described in Paragraph 4 that require a
13 real estate license. The audit examination covered a period of
14 time beginning on May 1, 2007 to September 30, 2008. The audit
15 examination revealed violations of the Code and the Regulations
16 as set forth in the following paragraphs, and more fully
17 discussed in Audit Report LA 080082 and the exhibits and work
18 papers attached to said audit report.
19

20 TRUST ACCOUNT

21 6.

22 BANCORP did not maintain a trust account during the
23 audit period.

24 ///

25 ///

26 ///

27

VIOLATIONS OF THE REAL ESTATE LAW

7.

In the course of activities described in Paragraph 4 above and during the examination period described in Paragraph 5, Respondents BANCORP and TRIEBEL, acted in violation of the Code and the Regulations in that Respondents:

(a) Originated two covered loan transactions, as defined pursuant to Financial Code Section 4970(b), that charged points and fees in excess of one thousand dollars (\$1,000) or six (6%) percent of the original principal balance, exclusive of points and fees for borrower James/Lucinda Griffith, in violation of Financial Code Section 4979.6. The loan interest rate was fourteen (14%) of the covered loan in the form of a first deed of trust in the amount of \$160,000.

(b) Structured the James/Lucinda Griffith covered loan transaction wherein six months advance loan payments were to be deducted from the loan proceeds, in violation of Financial Code Section 4973(d).

(c) Made a covered loan to borrower James/Lucinda Griffith without considering whether the borrower would be able to make the scheduled payments to retire the mortgage obligation \$160,000 based upon a consideration of the borrower's current and anticipated income, current obligations, employment status, and other financial resources, other than the equity in borrower's residence located at 27874 Auburn Unit #106, Mission Viejo,

1 California, which secures repayment of the loan, in violation of
2 Financial Code Section 4973(f)(1).

3 (d) Commingled trust funds in the form of borrower
4 mortgage payments by depositing said payments into BANCORP's
5 general account instead of depositing them into a trust account
6 designated for that purpose in the name of the broker as trustee
7 at a bank or other financial institution, in violation of Code
8 Sections 10145 and 10176(e) and Regulation 2832(a). BANCORP
9 collected \$3,710 mortgage payments from borrower Miguel Gonzalez
10 at the close of escrow from the \$70,000 second deed of trust made
11 and funded by and through BANCORP to be used to pay down the
12 first deed of trust for the borrower. The collected funds were
13 deposited into BR's general account.

14 (e) Failed to maintain an adequate control record in
15 the form of a columnar record in chronological order of trust
16 funds received including mortgage payments collected at the close
17 of escrow, in violation of Code Section 10145 and Regulation
18 2831.

19 (f) Failed to maintain an adequate separate record of
20 trust funds received including mortgage payments collected at the
21 close of escrow, in violation of Code Section 10145 and
22 Regulation 2831.1.

23 (g) Converted trust funds from borrowers James/Lucina
24 Griffith and Miguel Gonzalez, by depositing mortgage payments
25 received from said borrowers and depositing same into BR's
26

27

1 general account, in violation of Code Sections 10145 and 10177(j)
2 and Regulation 2832(a).

3 (h) Failed to deliver a Lender Purchaser Disclosure
4 Statement containing all the information required by Code
5 Sections 10232.4 and 10232.5, and containing all the information
6 required therein, to lenders before the lenders became obligated
7 to make the loans before the receipt by or on behalf of the
8 broker of any funds from the lenders for the James/Lucina
9 Griffith and Miguel Gonzalez' loans, in violation of Code Section
10 10238(1).

11 (i) BANCORP failed to submit a notice to the Department
12 within thirty (30) days of BANCORP's first multi-lender notes
13 secured directly by an interest in the same real property for the
14 James/Lucina Griffith and Maria Fallas Quiros loans. BANCORP
15 made or arranged its first multi-lender loan transaction on May
16 1, 2008, hereof yet failed to notify the Department thereof, in
17 violation of Code Section 10238(a).

18 (j) Failed to retain a statement wherein the investor-
19 purchasers indicated whether or not their investment in the
20 multi-investor James/Lucina Griffith and Maria Fallas Quiros
21 loans the exceeded ten (10%) of the investor-purchasers net
22 worth, in violation of Code Section 10238(f).

23 (k) Failed to deliver a written copy of BANCORP's
24 evaluation or appraisal of each parcel of real property securing
25 the notes or interest to each of the investor-purchasers for the
26

27

1 James/Lucina Griffith and Maria Fallas Quiros loans, in violation
2 of Code Section 10238(h)(3).

3 DISCIPLINARY STATUTES AND REGULATIONS

4 8.

5 The conduct of Respondents BANCORP and TRIEBEL
6 described in Paragraph 7, above, violated the Code and the
7 Regulations as set forth below:

8	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
9		
10	7(a)	Financial Code Section 4979.6
11		
12	7(b)	Financial Code Section 4973(d)
13		
14	7(c)	Financial Code Section 4973(f)(1)
15		
16	7(d)	Code Section 10176(e) and 10145 and
17		Regulation 2832(a)
18		
19	7(e)	Code Section 10145 and Regulation
20		2831
21		
22	7(f)	Code Section 10145 and Regulation
23		2831.1
24		
25	7(g)	Code Sections 10145, 10177(j) and
26		Regulation 2832(a)
27		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

7(h) Code Section 10238(a)

7(i) Code Section 10238(f)

7(j) Code Section 10238(h)(3)

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of BANCORP and TRIEBEL, under the provisions of Financial Code Sections 4970-4979 of the California Predatory Lending Law and Code Sections 10176(e), 10177(d), 10177(g) and/or 10177(j).

9.

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

10.

The overall conduct of Respondent TRIEBEL constitutes a failure on Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of BANCORP as required by Code Section 10159.2, and to keep BANCORP in compliance with the Real Estate Law, especially in regard to trust fund handling, multi-lender loans, and covered loans of the Predatory Lending Law, and is cause for the suspension or revocation of the real

1 estate license and license rights of TRIEBEL pursuant to the
2 provisions of Code Section 10177(d), 10177(g) and/or 10177(h).

3 WHEREFORE, Complainant prays that a hearing be
4 conducted on the allegations of this Accusation and that upon
5 proof thereof, a decision be rendered imposing disciplinary
6 action against the license and license rights of Respondents
7 BANCORP REALTY and TRIEBEL, 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 Dated at Los Angeles, California

12 this 1 day of April 2009. Robin Trujillo
13 Deputy Real Estate Commissioner
14
15
16
17
18
19
20
21
22
23

24 cc: Bancorp Realty
25 c/o Federico Jorge Triebel D.O.
26 Robin Trujillo
Sacto
Audits - Chona T. Soriano
27