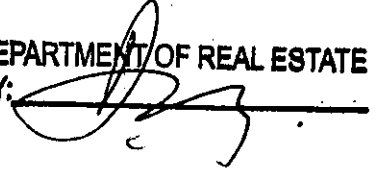


1 Department of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105

4 Telephone: (213) 576-6982

FILED

JUN 22 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 ROBERT ALLEN MANNING,)

13 Respondent.)

No. H-37178 LA

STIPULATION

AND

AGREEMENT

15 It is hereby stipulated by and between Respondent
16 ROBERT ALLEN MANNING (sometimes referred to as (Respondent), and
17 the Complainant, represented by Clara Duran Reed, Esq. acting by
18 and through Elliott Mac Lennan, Counsel for the Department of
19 Real Estate, as follows for the purpose of settling and disposing
20 of the Accusation (Accusation) filed on March 29, 2011, in this
21 matter:

22 1. All issues which were to be contested and all
23 evidence which was to be presented by Complainant and Respondent
24 at a formal hearing on the Accusation, which hearing was to be
25 held in accordance with the provisions of the Administrative
26 Procedure Act ("APA"), shall instead and in place thereof be
27

1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement ("Stipulation").

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

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

19 4. This Stipulation is based on the factual
20 allegations contained in the Accusation. In the interest of
21 expedience and economy, Respondent chooses not to contest these
22 allegations, but to remain silent and understands that, as a
23 result thereof, these factual allegations, without being admitted
24 or denied, will serve as a prima facie basis for the disciplinary
25 action stipulated to herein. The Real Estate Commissioner shall
26 not be required to provide further evidence to prove said factual
27 allegations.

1 5. This Stipulation is made for the purpose of
2 reaching an agreed disposition of this proceeding and is
3 expressly limited to this proceeding and any other proceeding or
4 case in which the Department of Real Estate ("Department"), the
5 state or federal government, or any agency of this state, another
6 state or federal government is involved, and otherwise shall not
7 be admissible in any other criminal or civil proceedings.

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

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

26 8. Respondent understands that by agreeing to this Stipulation,
27 Respondent agrees to pay, pursuant to Business and Professions

1 Code Section 10148, the cost of the audit. The amount of said
2 cost for the audit is \$6,694.00.

3 9. Respondent has received, read, and understands the
4 "Notice Concerning Costs of Subsequent Audit". Respondent
5 further understands that by agreeing to this Stipulation, the
6 findings set forth below in the Determination of Issues become
7 final, and the Commissioner may charge Respondent for the cost of
8 any subsequent audit conducted pursuant to Business and
9 Professions Code Section 10148 to determine if the violations
10 have been corrected. The maximum cost of the subsequent audit
11 will not exceed \$6,694.00.

12 DETERMINATION OF ISSUES

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

15 The conduct, acts and omissions of Respondent ROBERT
16 ALLEN MANNING, as described in Paragraph 4, above, are in
17 violation of Sections 10137 and 10145 of the Business and
18 Professions Code ("Code") and Sections 2731, 2831, 2831.1,
19 2832(a) and 2834 of Title 10, Chapter 6 of the California Code of
20 Regulations ("Regulations") and is a basis for discipline of
21 Respondent MANNING's licenses and license rights as a violation
22 of the Real Estate Law pursuant to Code Section 10177(d),
23 10177(g), and 10177(h).

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1 otherwise, for money paid to the Department under the terms of
2 this Decision.

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

8 B. The remaining sixty (60) days of the ninety (90)
9 day suspension shall be stayed for two (2) years upon the
10 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, which cause for disciplinary
16 action occurred within two (2) years from 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.

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1 II.

2 Pursuant to Section 10148 of the Business and
3 Professions Code, Respondent ROBERT ALLEN MANNING shall pay the
4 Commissioner's reasonable cost for (a) the audit which led to
5 this disciplinary action and (b) a subsequent audit to determine
6 if Respondent is now in compliance with the Real Estate Law. The
7 cost of the audit which led to this disciplinary action is
8 \$6,694.00. In calculating the amount of the Commissioner's
9 reasonable cost, the Commissioner may use the estimated average
10 hourly salary for all persons performing audits of real estate
11 brokers, and shall include an allocation for travel time to and
12 from the auditor's place of work. Said amount for the prior and
13 subsequent audits shall not exceed \$13,388.00. Respondent shall
14 pay such cost within 60 days of receiving an invoice from the
15 Commissioner detailing the activities performed during the audit
16 and the amount of time spent performing those activities.

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

26 ///

27 ///

1 III.

2 All licenses and licensing rights of Respondent are
3 indefinitely suspended unless or until Respondent provides proof
4 satisfactory to the Commissioner, of having taken and
5 successfully completed the continuing education course on trust
6 fund accounting and handling specified in paragraph (3) of
7 subdivision (a) of Section 10170.5 of the Business and
8 Professions Code. Proof of satisfaction of this requirement
9 includes evidence that Respondent has successfully completed the
10 trust fund account and handling continuing education course
11 within 120 days prior to the effective date of the Decision.

12 IV.

13 Respondent shall within six (6) months from the
14 effective date of the Decision herein, take and pass the
15 Professional Responsibility Examination administered by the
16 Department including the payment of the appropriate examination
17 fee. If Respondent fails to satisfy this condition, the
18 Commissioner may order suspension of Respondent's license until
19 Respondent passes the examination.

20 V.

21 Respondent shall, within nine (9) months from the
22 effective date of this Decision, present evidence satisfactory to
23 the Real Estate Commissioner that Respondent has, since the most
24 recent issuance of an original or renewal real estate license,
25 taken and successfully completed the continuing education
26 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
27 for renewal of a real estate license. If Respondent fails to

1 satisfy this condition, the Commissioner may order the suspension
2 of Respondent's license until Respondent presents such evidence.
3 The Commissioner shall afford Respondent the opportunity for a
4 hearing pursuant to the Administrative Procedure Act to present
5 such evidence.

6 VI.

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

11 VII.

12 Prior to the effective of the Decision herein,
13 Respondent shall first provide evidence satisfactory to the
14 Commissioner that maintenance fee markups charged to the property
15 owners totaling \$72.34, has been repaid to property owners for
16 real properties located at 116 Paseo and 230 Virginia, as set
17 forth in Audit Report LA 090275 dated December 30, 2010. If
18 Respondent fails to satisfy this condition, all licenses and
19 licensing rights or Respondent shall be indefinitely suspended,
20 unless or until such proof is provided.
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4 DATED: 5-19-11

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

6 * * *

7 EXECUTION OF THE STIPULATION

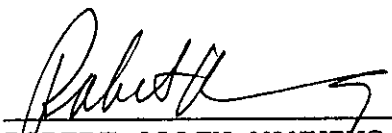
8 I have read the Stipulation and discussed it with my
9 counsel. Its terms are understood by me and are agreeable and
10 acceptable to me. I understand that I am waiving rights given to
11 me by the California Administrative Procedure Act (including but
12 not limited to Sections 11506, 11508, 11509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

19 MAILING, FACSIMILE, PDF

20 Respondent (1) shall mail the original signed signature
21 page of the stipulation herein to Elliott Mac Lennan: Attention:
22 Legal Section, Department of Real Estate, 320 W. Fourth St.,
23 Suite 350, Los Angeles, California 90013-1105. Additionally,
24 Respondent (2) shall also facsimile or PDF a copy of signed
25 signature page, to the Department at the following fax number:
26 (213) 576-6917, Attention: Elliott Mac Lennan.
27

1 A facsimile or PDF constitutes acceptance and approval
2 of the terms and conditions of this stipulation. Respondent
3 agrees, acknowledges and understands that by electronically
4 sending to the Department a facsimile or PDF copy of Respondent's
5 actual signature as it appears on the stipulation that receipt of
6 the facsimile or PDF copy by the Department shall be as binding
7 on Respondent as if the Department had received the original
8 signed stipulation.

9
10 DATED: 5-5-2011


ROBERT ALLEN MANNING, Respondent

11
12
13 DATED: 5-5-2011


CLARA DURAN REED, ESQ.
Attorney for Respondent
Approved as to form

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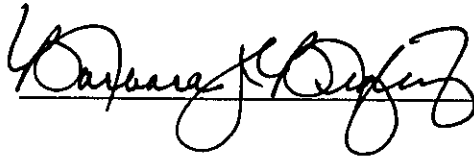
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* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondent ROBERT ALLEN MANNING and
shall become effective at 12 o'clock noon on
July 22, 2011.

IT IS SO ORDERED 6/6, 2011.

BARBARA J. BIGBY
Acting Real Estate Commissioner

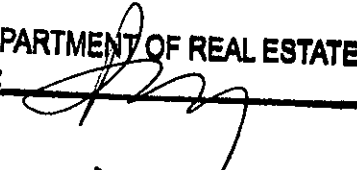


1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

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

FILED

MAR 29 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)	No. H-37178 LA
12)	
13 ROBERT ALLEN MANNING,)	<u>ACCUSATION</u>
14)	
15 Respondent.)	
16)	

15 The Complainant, Robin Trujillo, a Deputy Real Estate
16 Commissioner of the State of California, acting in her official
17 capacity, for cause of Accusation against ROBERT ALLEN MANNING,
18 is informed and alleges as follows:
19

20 1.

21 The Complainant, Robin Trujillo, acting in her official
22 capacity as a Deputy Real Estate Commissioner of the State of
23 California, makes this Accusation.

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2.

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

License Status

3.

At all times mentioned, ROBERT ALLEN MANNING ("MANNING"), was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. MANNING was originally licensed as a real estate broker on September 5, 1987.

Brokerage

4.

At all times mentioned, in the City of Redondo Beach, County of Los Angeles, MANNING engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker, including the operation and conduct of a property management business within the meaning of Code Section 10131(b), with the public wherein, for or in expectation of compensation, for another or others, Respondent leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or collected rents from real property, or improvements thereon.

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1 FIRST CAUSE OF ACCUSATION
2 (Audit Examination)

3 5.

4 On January 21, 2011 the Department completed an audit
5 examination of the books and records of MANNING, pertaining to
6 the property management activities described in Paragraph 3, that
7 require a real estate license. The audit examination covered a
8 period of time beginning on August 1, 2007 to June 30, 2010. The
9 audit examination revealed violations of the Code and the
10 Regulations as set forth below, and more fully discussed in Audit
11 Report LA 090275 and the exhibits and work papers attached.

12 Bank Accounts

13 6.

14 At all times mentioned, in connection with the
15 activities described in Paragraph 4, above, MANNING accepted or
16 received funds including funds in trust (hereinafter "trust
17 funds") from or on behalf of actual or prospective parties to
18 transactions handled by MANNING including property owners and
19 tenants. MANNING maintained the following bank accounts:
20

21 1. BA 1 - Bank of America, Account # XXXXXX-66430

22 Account Name: Tradewinds Limited
23 DBA Tradewind Apartments

24 Account No.: XXXXXXXXXXXX-66430

25 Bank Name: Bank of America

26 Bank Address: South Shores Center Br
27

PO BOX 37176
San Francisco, CA 94137-0176

2. BA 2 - Citibank, Account # XXXXXX-4645

Account Name: James Perry Bruno
ATF Living Trust of James & Faye Bruno
Dated 7/22/1986

Account No.: XXXXXXXXXX-4645

Bank Name: Citibank

Bank Address: Citibank Client Services
PO BOX 769013
San Antonio, TX 78245-9013

3. BA 3 - First California Bank, Account # XXXXXX-7277

Account Name: Peter S. Ozzimo
230-234 Virginia St.

Account No.: XXXXXXXXXX-7277

Bank Name: First California Bank

Bank Address: First California Bank
PO BOX 5112
Westlake Village, CA 91359-5112

4. BA 4 - Wells Fargo, Account # XXXXXX-6971

Account Name: 1800 S. Catalina, LLC

Account No.: XXXXXXXX-6971

Bank Name: Wells Fargo Bank

Bank Address: Wells Fargo Bank
PO BOX 6995
Portland, OR 97228-6995

1 5. BA 5 - Citizens Business Bank, Account # XXXXXX-8950

2 Account Name: John Tony Cutler
3 C/O South Bay Mgmt Services

4 Account No.: XXXXXXX-8950

5 Bank Name: Citizens Business Bank

6 Bank Address: Citizens Business Bank
7 Manhattan Beach Center
8 1800 N Sepulveda Blvd.,
9 Manhattan Beach, CA 90266

10 6. BA 6 - Citizens Business Bank, Account # XXXXXX-4521

11 Account Name: John McCarthy
12 Paul McCarthy
13 C/O South Bay Mgmt Services

14 Account No.: XXXXXXXXX-4521

15 Bank Name: Citizens Business Bank

16 Bank Address: Citizens Business Bank
17 Manhattan Beach Center
18 1800 N Sepulveda Blvd.,
19 Manhattan Beach, CA 90266

20 7. BA 7 - Citizens Business Bank, Account # XXXXXX-1816

21 Account Name: Vista Bahia Condominium Associ
22 C/O South Bay Mgmt Services

23 Account No.: XXXXXXX-1816

24 Bank Name: Citizens Business Bank

25 Bank Address: Citizens Business Bank
26 Manhattan Beach Center
27 1800 N Sepulveda Blvd.,
 Manhattan Beach, CA 90266

1 8. BA 8 - Wells Fargo, Account # XXXXXX-3817

2 Account Name: Theodore K. Wendorff
3 DBA San Remo Apartments

4 Account No.: XXXXXX-3817

5 Bank Name: Wells Fargo

6 Bank Address: Wells Fargo Bank

7

8

9 9. BA 9 - Bank of America, Account # XXXXXX-66454

10 Account Name: Owen Enterprises LLC

11 Account No.: XXXXXX66454

12 Bank Name: Bank of America

13 Bank Address: Bank of America
14 South Shores Center Br.
15 PO BOX 37176
San Francisco, CA 94137-0176

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1 Mary Colin and Michael Coy as signatories where MANNING was not
2 an authorized signor on the bank account, in violation of Code
3 Section 10177(g);

4 (C) Failed to maintain a control record in the form of
5 a columnar record in chronological order of all trust funds
6 including security deposits and rental receipts received,
7 deposited and disbursed for all properties managed, in violation
8 of Code Section 10145 and Regulation 2831;

9 (D) Failed to place trust funds, accepted on behalf of
10 another into the hands of the owner of the funds, a neutral
11 escrow depository or into a trust fund account, for all bank
12 accounts, in the name of the trustee at a bank or other financial
13 institution not later than three business days following receipt
14 of the funds by the broker or by the broker's salesperson, in
15 violation of Code Section 10145 and Regulation 2832(a);
16

17 (E) Permitted Mary Colin, MANNING's partner, an
18 unlicensed and unbonded person, to be authorized signatory on the
19 all nine bank accounts, in violation of Code Section 10145 and
20 Regulation 2834;

21 (F) Compensated Mary Colin, for performing acts for
22 which a real estate license is required including property
23 management, in violation of Code Section 10137;

24 (G) Failed to disclose that MANNING charged property
25 owners service fees and charges for which no agreement or
26 authorization existed. MANNING charged property owners an
27

1 additional five-percent (5%) above the cost of materials for
2 maintenance and repair, where said surcharge was neither
3 authorized nor contained in the management agreement between
4 MANNING and property owners, in violation of Code Section
5 10176(g);

6 (H) Used the fictitious name of "South Bay Management
7 Services", "South Bay Mgmt Services" and "S Bay Management
8 Services", to conduct licensed activities including property
9 management, without first obtaining from the Department a license
10 bearing said fictitious business names, in violation of Code
11 Section 10159.5 and Regulation 2731; and

12 (I) MANNING had no system in place for regularly
13 monitoring MANNING's compliance with the Real Estate Law
14 especially in regard to establishing, systems, policies and
15 procedures to review trust fund handling, in violation of Code
16 Section 10177(h) and Regulation 2725. MANNING failed to
17 appropriate policies, rules or procedures in place to review,
18 oversee, inspect and manage and especially to prevent the deposit
19 of trust funds into MANNING's general operating accounts which
20 were not designated as trust accounts, or to maintain any trust
21 fund handling records, in the form of advance fees, which were
22 improperly deposited into a general bank account.

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8.

The conduct of Respondent MANNING, as alleged and described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
7 (A)	Code Section 10145 and Regulation 2831.1
7 (B)	Code Section 10177 (g)
7 (C)	Code Section 10145 and Regulation 2831
7 (D)	Code Section 10145 and Regulation 2832 (a)
7 (E)	Code Section 10145 and Regulation 2834
7 (F)	Code Section 10137
7 (G)	Code Section 10176 (g)
7 (H)	Code Section 10159.5 and Regulation 2731

1 7(I)

Code Section 10145 and Regulation

2 10177(h)

3 The foregoing violations constitute cause for discipline of the
4 real estate license and license rights of MANNING under the
5 provisions of Code Sections 10176(g), 10177(d) and/or 10177(g).

6 SECOND CAUSE OF ACCUSATION
7 (Negligence)

8 9.

9 The overall conduct of Respondent MANNING constitutes
10 negligence or incompetence. This conduct and violation are cause
11 for discipline of the real estate license and license rights of
12 Respondent pursuant to Code Section 10177(g).

13 THIRD CAUSE OF ACCUSATION
14 (Breach of Fiduciary Duty)

15 10.

16 The conduct, acts and omissions of Respondent MANNING
17 constitutes a breach of fiduciary duty to real estate consumers
18 and Respondent's property management clientele. This conduct and
19 violation are cause for discipline of the real estate license and
20 license rights of Respondent MANNING pursuant to Code Section
21 10177(g).

22 FOURTH CAUSE OF ACCUSATION
23 (Supervision)

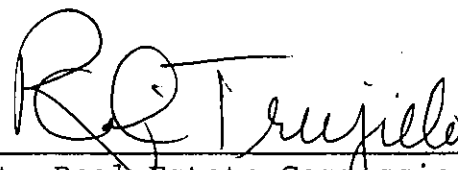
24 11.

25 The overall conduct of Respondent MANNING constitutes a
26 failure on his part to exercise reasonable supervision and
27

1 control over the licensed activities his brokerage, in violation
2 of Code Section 10177(h) and Regulation 2725. Respondent MANNING
3 failed to keep his brokerage in compliance with the Real Estate
4 Law, and is cause for discipline of the real estate license and
5 license rights of Respondent MANNING pursuant to the provisions
6 of Code Sections 10177(d), 10177(g) and 10177(h).

7 WHEREFORE, Complainant prays that a hearing be
8 conducted on the allegations of this Accusation and that upon
9 proof thereof, a decision be rendered imposing disciplinary
10 action against the license and license rights of Respondent
11 ROBERT ALLEN MANNING, under the Real Estate Law (Part 1 of
12 Division 4 of the Business and Professions Code) and for such
13 other and further relief as may be proper under other applicable
14 provisions of law including restitution where applicable and
15 costs of audit pursuant to applicable provisions of the
16 California Administrative Procedure Act.
17

18 Dated at Los Angeles, California

19
20 this 28 day of March 2011. 
21 Deputy Real Estate Commissioner
22
23

24 cc: Robert Allen Manning
25 Robin Trujillo
26 Audits - Justin Park
27 Enforcement - Abegail Buslon
Sacto