

FILED

MAR 08 2023

DEPT. OF REAL ESTATE  
By Emmanuel

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-42031 LA
	)	
MAXRES INC, doing business as	)	STIPULATION AND AGREEMENT
Century 21 Allstars and	)	
Century 21 Allstars Escrow Division,	)	
A Non-Independent Broker Escrow,	)	
JOSEPH GARCIA VILLAESCUSA,	)	
individually and as designated officer	)	
of MAXRES Inc,	)	
<u>EMMANUEL GAMBOA</u> , and	)	
<u>RYAN MICHAEL SMAGACZ</u> ,	)	
	)	
Respondents.	)	
	)	

It is hereby stipulated by and between Respondent EMMANUEL GAMBOA and Respondent RYAN MICHAEL SMAGACZ, represented by Bahij J. Joseph, and the Complainant, acting by and through Steve Chu, Counsel for the Department of Real Estate ("Department"), as follows for the purpose of settling and disposing of the Accusation filed on January 14, 2022, in this matter:

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1                   1.       All issues which were to be contested and all evidence which was to be  
2 presented by Complainant and Respondents at a formal hearing on the Accusation, which  
3 hearing was to be held in accordance with the provisions of the Administrative Procedure Act  
4 (“APA”), shall instead and in place thereof be submitted solely on the basis of the provisions of  
5 this Stipulation and Agreement (“Stipulation”).

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

9                   3.       On January 28, 2022, Respondents filed Notices of Defense pursuant to  
10 section 11506 of the Government Code for the purpose of requesting a hearing on the  
11 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notices  
12 of Defense. Respondents acknowledge that Respondents understand that by withdrawing said  
13 Notices of Defense, Respondents will thereby waive Respondents’ right to require the Real  
14 Estate Commissioner (“Commissioner”) to prove the allegations in the Accusation at a  
15 contested hearing held in accordance with the provisions of the APA and that Respondents will  
16 waive other rights afforded to Respondents in connection with the hearing such as the right to  
17 present evidence in defense of the allegations in the Accusation and the right to cross-examine  
18 witnesses.

19                   4.       Respondents, pursuant to the limitations set forth below, hereby admit  
20 that the factual allegations in the Accusation filed in this proceeding are true and correct and the  
21 Commissioner shall not be required to provide further evidence to prove such allegations.

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1                   5.       It is understood by the parties that the Real Estate Commissioner may  
2 adopt the Stipulation as his Decision in this matter, thereby imposing the penalty and sanctions  
3 on Respondents' real estate licenses and license rights as set forth in the below Order. In the  
4 event that the Commissioner in his discretion does not adopt the Stipulation, it shall be void  
5 and of no effect, and Respondents shall retain the right to a hearing and proceeding on the  
6 Accusation under all the provisions of the APA and shall not be bound by any admission or  
7 waiver made herein.

8                   6.       The Order or any subsequent Order of the Commissioner made pursuant  
9 to this Stipulation shall not constitute an estoppel, merger or bar to any further administrative or  
10 civil proceedings by the Department with respect to any matters which were not specifically  
11 alleged to be causes for the Accusation in this proceeding.

12                                   DETERMINATION OF ISSUES

13                   By reason of the foregoing stipulations, admissions, and waivers, and solely for  
14 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and  
15 agreed that the following Determination of Issues shall be made:

16                                   I.

17                   The conduct, acts, and/or omissions of Respondent EMMANUEL GAMBOA, as  
18 described in the Accusation, are in violation of California Business and Professions Code  
19 ("Code") section 10137 and constitute cause for the suspension or revocation of all real estate  
20 licenses, license endorsements, and license rights of Respondent EMMANUEL GAMBOA  
21 under Code sections 10137, 10176(a), 10176(c), 10176(i), 10177(d), 10177(g), and 10177(j).

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1 II.

2 The conduct, acts, and/or omissions of Respondent RYAN MICHAEL  
3 SMAGACZ, as described in the Accusation, are in violation of California Business and  
4 Professions Code (“Code”) section 10137 and constitute cause for the suspension or revocation  
5 of all real estate licenses, license endorsements, and license rights of Respondent RYAN  
6 MICHAEL SMAGACZ under Code sections 10137, 10176(a), 10176(c), 10176(i), 10177(d),  
7 10177(g), and 10177(j).

8 ORDER

9 I.

10 All licenses and licensing rights of Respondent EMMANUEL GAMBOA under  
11 the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license  
12 shall be issued to Respondent pursuant to Section 10156.5 of the Code if Respondent makes  
13 application therefor and pays to the Department the appropriate fee for the restricted license  
14 within ninety (90) days from the effective date of this Decision. The restricted license issued to  
15 Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and to the  
16 following limitations, conditions, and restrictions imposed under Section 10156.6 of the Code:

17 1. The restricted license issued to Respondent may be suspended prior to  
18 hearing by Order of the Real Estate Commissioner in the event of Respondent’s conviction,  
19 plea of guilty, or plea of nolo contendere to a crime which is substantially related to  
20 Respondent’s fitness or capacity as a real estate licensee.

21 2. The restricted license issued to Respondent may be suspended prior to  
22 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the  
23 Commissioner that Respondent has violated provisions of the California Real Estate Law, the  
24 Subdivided Lands Law, Regulations of the Real Estate Commissioner, or the conditions  
25 attaching to this restricted license.

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1                   3.       Respondent shall not be eligible to apply for the issuance of an  
2       unrestricted real estate license, including designated officer or mortgage loan originator  
3       endorsement, nor for the removal of any of the conditions, limitations or restrictions of a  
4       restricted license until five (5) years have elapsed from the effective date of this Decision and  
5       Order. Respondent withdraws all pending license applications.

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

- 10                   (a)       That the employing broker has read the Decision of the  
11                               Commissioner which granted the right to a restricted license; and  
12                   (b)       That the employing broker will exercise close supervision over  
13                               the performance by the restricted licensee relating to activities for  
14                               which a real estate license is required.

15                   5.       Respondent shall, within nine (9) months from the effective date of this  
16       Decision and Order, present evidence satisfactory to the Commissioner that Respondent has,  
17       since the most recent issuance of an original or renewal real estate license, taken and  
18       successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the  
19       Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this  
20       condition, Respondent's real estate license shall automatically be suspended until Respondent  
21       presents evidence satisfactory to the Commissioner of having taken and successfully completed  
22       the continuing education requirements. Proof of completion of the continuing education  
23       courses must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013,  
24       Sacramento, CA 95813-7013.

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1                   6.       Respondent shall, within nine (9) months from the effective date of this  
2 Decision and Order, take and pass the Professional Responsibility Examination administered by  
3 the Department including the payment of the appropriate examination fee. If Respondent fails  
4 to satisfy this condition, all of Respondent's real estate licenses and license rights shall  
5 automatically be suspended until Respondent passes the examination. Proof of passing the  
6 examination must be delivered to the Department of Real Estate, Flag Section at  
7 P.O. Box 137013, Sacramento, CA 95813-7013.

8                   7.       All licenses and licensing rights of Respondent EMMANUEL  
9 GAMBOA are indefinitely suspended unless or until Respondent EMMANUEL GAMBOA  
10 pays, jointly and severally with Respondent RYAN MICHAEL SMAGACZ, the sum of  
11 \$1,246.00 for the Commissioner's reasonable cost of the investigation and enforcement which  
12 led to this disciplinary action. Said payment shall be in the form of a cashier's check made  
13 payable to the Department of Real Estate. The investigative and enforcement costs must be  
14 delivered to the Department of Real Estate, Flag Section at P.O. Box 137013,  
15 Sacramento, CA 95813-7013, prior to the effective date of this Decision and Order.

16                  8.       Respondent shall notify the Commissioner in writing within 72 hours of  
17 any arrest by sending a certified letter to the Commissioner at the Department of Real Estate,  
18 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013. The letter shall set forth the  
19 date of Respondent's arrest, the crime for which Respondent was arrested and the name and  
20 address of the arresting law enforcement agency. Respondent's failure to timely file written  
21 notice shall constitute an independent violation of the terms of the restricted license and shall  
22 be grounds for the suspension or revocation of that license.

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1 II.

2 All licenses and licensing rights of Respondent RYAN MICHAEL SMAGACZ  
3 under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson  
4 license shall be issued to Respondent pursuant to Section 10156.5 of the Code if Respondent  
5 makes application therefor and pays to the Department the appropriate fee for the restricted  
6 license within ninety (90) days from the effective date of this Decision. The restricted license  
7 issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Code  
8 and to the following limitations, conditions, and restrictions imposed under Section 10156.6 of  
9 the Code:

10 1. The restricted license issued to Respondent may be suspended prior to  
11 hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction,  
12 plea of guilty, or plea of nolo contendere to a crime which is substantially related to  
13 Respondent's fitness or capacity as a real estate licensee.

14 2. The restricted license issued to Respondent may be suspended prior to  
15 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the  
16 Commissioner that Respondent has violated provisions of the California Real Estate Law, the  
17 Subdivided Lands Law, Regulations of the Real Estate Commissioner, or the conditions  
18 attaching to this restricted license.

19 3. Respondent shall not be eligible to apply for the issuance of an  
20 unrestricted real estate license, including designated officer or mortgage loan originator  
21 endorsement, nor for the removal of any of the conditions, limitations or restrictions of a  
22 restricted license until five (5) years have elapsed from the effective date of this Decision and  
23 Order. Respondent withdraws all pending license applications.

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

- 1 (a) That the employing broker has read the Decision of the  
2 Commissioner which granted the right to a restricted license; and  
3 (b) That the employing broker will exercise close supervision over  
4 the performance by the restricted licensee relating to activities for  
5 which a real estate license is required.

6 5. Respondent shall, within nine (9) months from the effective date of this  
7 Decision and Order, present evidence satisfactory to the Commissioner that Respondent has,  
8 since the most recent issuance of an original or renewal real estate license, taken and  
9 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the  
10 Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this  
11 condition, Respondent's real estate license shall automatically be suspended until Respondent  
12 presents evidence satisfactory to the Commissioner of having taken and successfully completed  
13 the continuing education requirements. Proof of completion of the continuing education  
14 courses must be delivered to the Department of Real Estate, Flag Section at P.O. Box 137013,  
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4 \$1,246.00 for the Commissioner's reasonable cost of the investigation and enforcement which  
5 led to this disciplinary action. Said payment shall be in the form of a cashier's check made  
6 payable to the Department of Real Estate. The investigative and enforcement costs must be  
7 delivered to the Department of Real Estate, Flag Section at P.O. Box 137013,  
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11 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013. The letter shall set forth the  
12 date of Respondent's arrest, the crime for which Respondent was arrested and the name and  
13 address of the arresting law enforcement agency. Respondent's failure to timely file written  
14 notice shall constitute an independent violation of the terms of the restricted license and shall  
15 be grounds for the suspension or revocation of that license.

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17 DATED: 1-18-2023

  
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Steve Chu, Counsel  
Department of Real Estate

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We have read the Stipulation and Agreement. We understand that we are waiving rights given to us by the California Administrative Procedure Act, (including but not limited to sections 11521 and 11523 of the Government Code), and we willingly, intelligently, and voluntarily waive those rights, including the right to seek reconsideration and the right to seek judicial review of the Commissioner's Decision and Order by way of a writ of mandate.

We agree, acknowledge, and understand that we cannot rescind or amend this Stipulation and Agreement.

We can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by mailing the original signed Stipulation and Agreement to: Steve Chu, Department of Real Estate, 320 West 4th Street, Suite 350, Los Angeles, California 90013-1105. Steve Chu must receive the original signed Stipulation and Agreement or a copy faxed to (213) 576-6917 by January 16, 2023; if not, this Stipulation and Agreement is invalid and void because the sum for the Commissioner's reasonable cost of the investigation and enforcement which led to this disciplinary action will increase.

DATED: 01/06/2023

  
EMMANUEL GAMBOA  
Respondent

DATED: \_\_\_\_\_

\_\_\_\_\_  
RYAN MICHAEL SMAGACZ  
Respondent

DATED: \_\_\_\_\_

\_\_\_\_\_  
Bahij J. Joseph  
Counsel for Respondents  
Approved as to Form

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2 We have read the Stipulation and Agreement. We understand that we are  
3 waiving rights given to us by the California Administrative Procedure Act. (including but not  
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5 and voluntarily waive those rights, including the right to seek reconsideration and the right to  
6 seek judicial review of the Commissioner's Decision and Order by way of a writ of mandate.

7 We agree, acknowledge, and understand that we cannot rescind or amend this  
8 Stipulation and Agreement.

9 We can signify acceptance and approval of the terms and conditions of this  
10 Stipulation and Agreement by mailing the original signed Stipulation and Agreement to:  
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12 California 90013-1105. Steve Chu must receive the original signed Stipulation and Agreement  
13 or a copy faxed to (213) 576-6917 by January 16, 2023; if not, this Stipulation and Agreement  
14 is invalid and void because the sum for the Commissioner's reasonable cost of the investigation  
15 and enforcement which led to this disciplinary action will increase.  
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17 DATED: \_\_\_\_\_

EMMANUEL GAMBOA  
Respondent

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19 DATED: 1/6/23

  
RYAN MICHAEL SMAGACZ  
Respondent

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22 DATED: 1/6/2023

  
Bahij J. Joseph  
Counsel for Respondents  
Approved as to Form

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