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7	Attorneys for John Anthony Glass						
7	BEFORE THE REAL ESTATE COMMISSION						
8	STATE OF NEVADA						
9							
10	SHARATH CHANDRA, Administrator						
	REAL ESTATE DIVISIÓN, DEPARTMENT OF BUSINESS & INDUSTRY,	Case No.: 2017-1473					
11	STATE OF NEVADA,	ANSWER TO COMPLAINT					
12	Petitioner,	ANSWER TO COMPLAINT					
13							
14	vs.						
15	JOHN ANTHONY GLASS,						
16	Respondent.						
17							
18	ANSWER TO COMPLAINT						
19	COMES NOW Respondent JOHN ANTHONY GLASS, by and through his counsel of						
20	record, Scott A. Marquis, Esq., and Patrick C. McDonnell, Esq., of the law firm of Marquis						
	Aurbach Coffing, and in answer to the Complaint would show as follows:						
21		ICTION					
22							
23	Respondent denies the allegations of this paragraph.						
24	FACTUAL A	LLEGATION					
25	1. In answer to Paragraph 1 of the Complaint, Respondent admits only that he was						
26	not licensed by the Division. Respondent lacks knowledge or information sufficient to form a						
27	belief as to the truth of the allegations regarding the Division's understanding of the relevant time						
20	period, and therefore denies the remaining allegations of paragraph 1.						

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2.	In answer	to F	Paragraph	2 of	f the	Complaint,	Respondent	admits the	allegations
contained there	ein								

- 3. In answer to Paragraph 3 of the Complaint, Respondent admits that he was an agent for Marcus & Millichap Real Estate Investment Services, Inc. ("Marcus & Millichap"). Otherwise, Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding the Division's understanding of the relevant time period, and therefore denies the remaining allegations in Paragraph 3.
- 4. In answer to Paragraph 4 of the Complaint, Respondent admits that he signed an Interstate Brokerage Cooperation Agreement regarding the referenced property. Otherwise, Respondent denies the remaining allegations in Paragraph 5.
- 5. In answer to Paragraph 5 of the Complaint, Respondent admits that he signed the referenced agreement on or about June 26, 2017 and that it has the quoted language. Otherwise, Respondent denies the remaining allegations in paragraph 5.
- 6. In answer to Paragraph 6 of the Complaint, Respondent admits the allegations of Paragraph 6.

### **VIOLATIONS**

7. In answer to Paragraph 7 of the Complaint, Respondent denies the allegations contained therein.

# DISCIPLINE AUTHORIZED

- 8. The allegations contained in Paragraph 8 of the Complaint state legal conclusions and do not require a response from the Respondent; however, to the extent a response is required by rule, Respondent denies any allegations that are inconsistent with the referenced statutes.
- 9. The allegations contained in Paragraph 9 of the Complaint state legal conclusions and do not require a response from the Respondent; however, to the extent a response is required by rule, www3.
  - 10. The allegations contained in Paragraph 10 of the Complaint state only a request

for relief, and do not require a response from the Respondent; however, to the extent a response is required by rule, Respondent denies the allegations 3 with the referenced statutes.

# **DEFENSES & AFFIRMATIVE DEFENSES**

- 11. The Complaint fails to state a claim against the Respondent upon which relief may be granted.
- 12. The Respondent is not guilty of violating any Order of the Nevada Real Estate Commission, any agreement with the Nevada Real Estate Division, or any provision of NRS 645 or any regulation adopted pursuant thereto.
- 13. The Respondent is not guilty of not exercising reasonable skill and care with respect to all parties to the real estate transactions at issue.
- 14. To the extent the Division has failed to produce all communications, reports, affidavits, or depositions in its possession which are relevant to the Complaint, the Complaint and the Division's claims should be barred. To the extent the Division intends to present evidence at the hearing obtained after notice to Respondent, it must show that the evidence was not available after diligent investigation before the time notice was given and the evidence was given or communicated to Respondent immediately after it was obtained.
- 15. To the extent that it seeks to do so by its Complaint, the Division lacks standing to enforce any agreements identified in the Complaint to which Respondent is a party.
- 16. Respondent is not guilty of any violation because the licensing and cooperative certificate scheme promulgated by the Nevada Real Estate Commission and/or the Nevada Real Estate Division, including NAC 645.180, 645.183, and 645.185, violates the United States Constitution's Commerce Clause for essentially the reasons set forth in Respondent's Amended Complaint (which is awaiting approval for filing by the Federal Court in the currently pending lawsuit styled No. 2-16-CV-01299 *Marcus & Millichap Real Estate Investment Services of Nevada, Inc. et al. v. Decker et al.*, in the United States District Court for the District of Nevada, Southern Division, a copy of which is attached as **Exhibit 1** (without exhibits).
- 17. Respondent is not guilty of any violation because the Nevada Real Estate Commission ("NREC") and/or the Nevada Real Estate Division ("NRED") promulgated their

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licensing and cooperative certificate scheme, including NAC 645.180, 645.183, and 645.185, without following the required statutes, rules and regulations, including without limitation:

- a. NREC failed to comply with the requirements for deliberating only in public meetings pursuant to a duly posted agenda with sufficient opportunity for informed and meaningful participation by the public, and that such public meetings include a discussion of the true purpose and true effect of a proposed regulation.
- b. NREC and NRED failed to comply with the requirements for Regulation Workshops pursuant to a duly posted agenda with sufficient opportunity for informed and meaningful participation by the public, and with public discussion of the true purpose and true effect of a proposed regulation.
- c. NREC and NRED failed to comply with the requirements for a Notice of Intent to Act Upon a Regulation that includes the true purpose and need of a proposed regulation. the true estimated economic effect of a proposed regulation, and the true effect on federal law including the United States Constitution.
- d. NREC failed to comply with the requirements for written minutes of meetings accurately reflecting the basis for actions taken by NREC.
- e. On information and belief, NREC violated the prohibition on ex parte communications regarding matters pending before NREC.
- f. NREC failed to comply with the requirement that the purpose of and policy behind a regulatory scheme be discussed in an open meeting and reflected in the written minutes thereof.
- NRED failed to comply with the requirement that its Administrator g. provide an advisory opinion in appropriate circumstances.
- h. NREC and NRED failed to comply with the requirement that a regulatory scheme be preceded by and supported by a duly issued and considered Small Business Impact Statement.
- i. NREC and NRED failed to comply with the requirement under NRS 233B.066 that a regulatory scheme be preceded by and supported by a Legislative Review that

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identifies a true explanation of the need for the regulation, a true description of how public comment was solicited, a true summary of public response, and a true estimate of the economic effect of the regulation on the business which it is to regulate and on the public.

- j. Respondent is not guilty of any violation because the Nevada Real Estate Commission and/or the Nevada Real Estate Division promulgated their licensing and cooperative certificate scheme, including NAC 645.180, 645.183, and 645.185, without statutory authority and in violation of the NRS 645.605.
- 18. NRED failed to comply with the requirement under NAC 645.680 that the complaint against Respondent be made on a standard form or affidavit.
- 19. NRED failed to adequately investigate the charges against Respondent. instance, NRED failed to make any attempt to contact any consumers or any of the parties to the transactions identified in the Complaint.
- 20. NRS 645.680 requires that Respondent be provided, at least 30 days prior to any scheduled hearing, copies of all communications, reports, affidavits and depositions in the possession of NRED relevant to the Complaint. NRED and NREC have failed and refused to comply with this provision. On information and belief, NRED and NREC contend that they can produce only those records on which they intend to rely, which is a plain violation of NRS 645.680, and which denies Respondent's due process rights.
- 21. NRED and NREC have historically interpreted and enforced NAC 645.185 in a manner that was contradictory to the plain language of the regulation. Namely, they have always precluded out of state brokers from offering real estate for sale in Nevada to a person other than a resident of Nevada, even though NAC 645.185 expressly allowed out of state brokers to offer real estate in Nevada for sale to a person other than a resident of Nevada.
- 22. As historically and currently interpreted by NREC and NRED, the statutes and regulations relating to out of state brokerage activities are so ambiguous as to be unenforceable.
- 23. The Complaint is so ambiguous, uncertain and unintelligible that it fails to put Respondent on adequate notice of the charges against him, and therefore is a denial of Respondent's due process rights.

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- 24. NREC denied Respondent his due process rights by failing to comply with NRS §§233B.121(4), 233B.127(3), and 645.235(4).
- 25. NREC refused to provide Respondent with an adequate opportunity to prepare so that he could more fully respond and present evidence in his defense and argument on all issues involved.
- 26. NREC violated Nevada Administrative Code § 645.830, continuances should be granted if good cause exists. Here, counsel needed additional time within which to prepare the defense. Respondents are entitled to and require an adequate opportunity to prepare, so that they may fully respond and present evidence and argument on all issues involved. See, Nev. Rev. Stat. §§233B.121(4), 233B.127(3), and 645.235(4).
- 27. Good cause also exists for continuing the hearing from its March 20-22, 2018, dates also includes the fact that Respondent underwent surgery for thyroid cancer on March 1, 2018.
- 28. The NREC failed to comply with statutory requirements designed to protect respondent's due process rights.
- 29. NRS 645.680(4) mandates that the respondent in a Nevada Real Estate Commission disciplinary hearing must be "given" written notice of the date, time and place of the hearing at least 30 days prior to the hearing. NRED failed to give Respondent such 30 day notice. Specifically, pursuant to NRS 645.680(4), Respondent should have received the notice no later than February 17, 2018. However, Respondent's counsel did not receive the Notices until February 21, 2018, when they arrived by certified mail. Therefore, Respondent was not "given" the Notice 30 days prior to the hearing as required by statute.
- 30. NREC further denied Respondent due process by failing to timely approve Respondent's request that NREC cause the depositions of four witnesses pursuant to NRS 645.730(1).

# **AFFIRMATION**

31. Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the personal information of any person as defined in NRS 603A.040.

# MARQUIS AURBACH COFFING 10001 Park Run Drive Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

# **DATED** this 14th day of March 2018.

# MARQUIS AURBACH COFFING

Bv

Scott AcMarquis, Esq. Nevada Bar No. 6407
Patrick C. McDonnell, Esq. Nevada Bar No. 13188
10001 Park Run Drive
Las Vegas, Nevada 89145

Attorneys for John Anthony Glass

# MARQUIS AURBACH COFFING

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# **CERTIFICATE OF SERVICE**

I hereby certify that on the date shown below, a true and correct copy of the foregoing instrument was served on the following parties:

# Via Email

REAL ESTATE DIVISION STATE OF NEVADA 3300 W. Sahara Avenue, Suite 350

Las Vegas, Nevada 89102

Attn: Rebecca Hardin, Commission Coordinator Telephone: (702) 486-4074 Facsimile: (702) 486-4067

rhardin@red.nv.gov

# Via Email

Keith A. Kizer
Senior Deputy Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-3326
kkizer@ag.nv.gov
Attorney for Real Estate Division

**DATED** this 14<sup>th</sup> day of March, 2018.

An employee of Marquis Aurbach Coffing