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SEP 17 2019

REAL ESTATE COMMISSION
BY *[Signature]*

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DICKINSON WRIGHT PLLC
Michael N. Feder
Nevada Bar No. 7332
Email: mfeder@dickinson-wright.com
8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113-2210
Tel: (702) 550-4400
Fax: (844) 670-6009

COOPER, WHITE & COOPER LLP
JILL B. ROWE (Admitted Pro Hac Vice)
California Bar No. 197713
Email: jrowe@cwclaw.com
WILLIAM H.G. NORMAN (Admitted Pro Hac Vice)
California Bar No. 49942
Email: wnorman@cwclaw.com
201 California Street, 17th Floor
San Francisco, CA 94111
Tel: (415) 433-1900
Fax: (415) 433-5530

Attorneys for Respondent Pablo Rodriguez

BEFORE THE REAL ESTATE COMMISSION

STATE OF NEVADA

SHARATH CHANDRA, Administrator
REAL ESTATE DIVISION, DEPARTMENT
OF BUSINESS & INDUSTRY,
STATE OF NEVADA.

CASE NO. 2018-972

ANSWER TO COMPLAINT

Petitioner,

vs.

PABLO RODRIGUEZ,

Respondent.

ANSWER TO COMPLAINT

COMES NOW Respondent PABLO RODRIGUEZ, by and through his counsel of record,
and in answer to the Complaint would show as follows:

JURISDICTION

Respondent denies the allegations of this paragraph. Additionally, Respondent specifically
refers to the Order of the First Judicial District Court for the State of Nevada in and for Carson
City, Case No. 18OC000411B dated March 12, 2019, attached hereto as **Exhibit A**. In that Order,

1 among other things, the Court set aside the Commission's and the Division's prior efforts to
2 discipline real estate agents for the same type of conduct alleged here against Respondent. In
3 setting aside those prior disciplinary orders, the Court advised the Division and the Commission
4 that "the Commission cannot discipline Petitioners for engaging or assisting with unlicensed
5 activity" where, as here, "the Commission requires nonresident Petitioners to have a cooperative
6 certificate to engage in cooperative brokering, but has unlawfully precluded the nonresident
7 Petitioners from obtaining such certificates by limiting the types of transactions eligible for
8 cooperative certificates." (See Paragraph 24 of the Order, emphasis added.) The Division's cease
9 and desist letter violates this plain language from the District Court.

10 **PROCEDURAL HISTORY**

- 11 1. Respondent admits the allegations of Paragraph 1.
- 12 2. Respondent admits that he received a letter from the Division in or around late July,
13 2018. Respondent denies the remaining allegations of Paragraph 2.
- 14 3. Respondent admits that he provided a response on or about August 7, 2018,
15 submitted through Marcus & Millichap's counsel. Respondent lacks personal knowledge of the
16 remaining allegations of Paragraph 3, and is therefore unable to admit or deny those allegations.
- 17 4. Respondent lacks personal knowledge regarding the allegations of Paragraph 4, and
18 is therefore unable to admit or deny them. Respondent further denies that such allegations can
19 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the
20 basis of the allegations of Paragraph 4 would exceed the Commission's statutory authority for the
21 reasons stated by the District Court in Exhibit A.
- 22 5. Respondent admits that Marcus & Millichap's counsel received a letter in or about
23 mid-January, 2019, that stated the Division's intent commence a disciplinary proceeding.
24 Respondent denies the remaining allegations of Paragraph 5.

25 **FACTUAL ALLEGATIONS**

- 26 1. Respondent admits the factual allegations of Paragraph 1, but denies that such
27 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
28 finding on the basis of the allegations of Paragraph 1 would exceed the Commission's statutory

1 authority for the reasons stated by the District Court in Exhibit A.

2 2. Respondent admits the factual allegations of Paragraph 2, but denies that such
3 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
4 finding on the basis of the allegations of Paragraph 2 would exceed the Commission's statutory
5 authority for the reasons stated by the District Court in Exhibit A.

6 3. Respondent lacks personal knowledge regarding the allegations of Paragraph 3, and
7 is therefore unable to admit or deny them. Respondent further denies that such allegations can
8 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the
9 basis of the allegations of Paragraph 3 would exceed the Commission's statutory authority for the
10 reasons stated by the District Court in Exhibit A.

11 4. Respondent lacks personal knowledge regarding the allegations of Paragraph 4, and
12 is therefore unable to admit or deny them. Respondent further denies that such allegations can
13 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the
14 basis of the allegations of Paragraph 4 would exceed the Commission's statutory authority for the
15 reasons stated by the District Court in Exhibit A.

16 5. Respondent denies the factual allegations of Paragraph 5, and further denies that
17 such allegations can form the basis of any disciplinary finding. Among other grounds, any
18 disciplinary finding on the basis of the allegations of Paragraph 5 would exceed the Commission's
19 statutory authority for the reasons stated by the District Court in Exhibit A.

20 6. Respondent admits the factual allegations of Paragraph 6, but denies that such
21 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
22 finding on the basis of the allegations of Paragraph 6 would exceed the Commission's statutory
23 authority for the reasons stated by the District Court in Exhibit A.

24 7. Respondent admits the factual allegations of Paragraph 7, but denies that such
25 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
26 finding on the basis of the allegations of Paragraph 7 would exceed the Commission's statutory
27 authority for the reasons stated by the District Court in Exhibit A.

28 8. Respondent admits that on or about November 19, 2018, the Division requested a

1 copy of the purported document. Respondent denies the remaining factual allegations of
2 Paragraph 8, and further denies that such allegations can form the basis of any disciplinary finding.
3 Among other grounds, any disciplinary finding on the basis of the allegations of Paragraph 8 would
4 exceed the Commission's statutory authority for the reasons stated by the District Court in Exhibit
5 A.

6 9. Respondent admits that Marcus & Millichap's counsel responded as stated.
7 Respondent denies the remaining factual allegations of Paragraph 9, and further denies that such
8 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
9 finding on the basis of the allegations of Paragraph 9 would exceed the Commission's statutory
10 authority for the reasons stated by the District Court in Exhibit A.

11 10. Respondent admits the factual allegations of Paragraph 10, but denies that such
12 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
13 finding on the basis of the allegations of Paragraph 10 would exceed the Commission's statutory
14 authority for the reasons stated by the District Court in Exhibit A.

15 11. Respondent lacks personal knowledge regarding the allegations of Paragraph 11,
16 and is therefore unable to admit or deny them. Respondent further denies that such allegations can
17 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the
18 basis of the allegations of Paragraph 11 would exceed the Commission's statutory authority for the
19 reasons stated by the District Court in Exhibit A.

20 12. Respondent admits the factual allegations of Paragraph 12, but denies that such
21 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
22 finding on the basis of the allegations of Paragraph 12 would exceed the Commission's statutory
23 authority for the reasons stated by the District Court in Exhibit A.

24 13. Respondent admits the factual allegations of Paragraph 13, but denies that such
25 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
26 finding on the basis of the allegations of Paragraph 13 would exceed the Commission's statutory
27 authority for the reasons stated by the District Court in Exhibit A.

28 14. Respondent denies the factual allegations of Paragraph 14, and further denies that

1 such allegations can form the basis of any disciplinary finding. Among other grounds, any
2 disciplinary finding on the basis of the allegations of Paragraph 14 would exceed the Commission's
3 statutory authority for the reasons stated by the District Court in Exhibit A.

4 15. Respondent admits the factual allegations of Paragraph 15, but denies that such
5 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
6 finding on the basis of the allegations of Paragraph 15 would exceed the Commission's statutory
7 authority for the reasons stated by the District Court in Exhibit A.

8 16. Respondent lacks personal knowledge regarding the allegations of Paragraph 16,
9 and is therefore unable to admit or deny them. Respondent further denies that such allegations can
10 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the
11 basis of the allegations of Paragraph 16 would exceed the Commission's statutory authority for the
12 reasons stated by the District Court in Exhibit A.

13 17. Respondent lacks personal knowledge regarding the allegations of Paragraph 17,
14 and is therefore unable to admit or deny them. Respondent further denies that such allegations can
15 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the
16 basis of the allegations of Paragraph 17 would exceed the Commission's statutory authority for the
17 reasons stated by the District Court in Exhibit A.

18 18. Respondent admits the Consent to Act form does not expressly state the property
19 address. Respondent denies the remaining allegations of Paragraph 18, and further denies that
20 such allegations can form the basis of any disciplinary finding. Among other grounds, any
21 disciplinary finding on the basis of the allegations of Paragraph 18 would exceed the Commission's
22 statutory authority for the reasons stated by the District Court in Exhibit A.

23 19. Respondent admits that he was paid a net commission of \$42,750. Respondent
24 lacks personal knowledge regarding the remaining allegations of Paragraph 19, and is therefore
25 unable to admit or deny them. Respondent further denies that such allegations can form the basis
26 of any disciplinary finding. Among other grounds, any disciplinary finding on the basis of the
27 allegations of Paragraph 19 would exceed the Commission's statutory authority for the reasons
28 stated by the District Court in Exhibit A.

1 20. Respondent admits the factual allegations of Paragraph 20, but denies that such
2 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
3 finding on the basis of the allegations of Paragraph 20 would exceed the Commission's statutory
4 authority for the reasons stated by the District Court in Exhibit A.

5 21. Respondent admits the factual allegations of Paragraph 21, but denies that such
6 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
7 finding on the basis of the allegations of Paragraph 21 would exceed the Commission's statutory
8 authority for the reasons stated by the District Court in Exhibit A.

9 22. Respondent lacks personal knowledge regarding the allegations of Paragraph 22,
10 and is therefore unable to admit or deny them. Respondent further denies that such allegations can
11 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the
12 basis of the allegations of Paragraph 22 would exceed the Commission's statutory authority for the
13 reasons stated by the District Court in Exhibit A.

14 23. Respondent lacks personal knowledge regarding the allegations of Paragraph 23,
15 and is therefore unable to admit or deny them. Respondent further denies that such allegations can
16 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the
17 basis of the allegations of Paragraph 23 would exceed the Commission's statutory authority for the
18 reasons stated by the District Court in Exhibit A.

19 24. Respondent denies the allegations of Paragraph 24, and further denies that such
20 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
21 finding on the basis of the allegations of Paragraph 24 would exceed the Commission's statutory
22 authority for the reasons stated by the District Court in Exhibit A.

23 25. Respondent admits the factual allegations of Paragraph 25, but denies that such
24 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
25 finding on the basis of the allegations of Paragraph 25 would exceed the Commission's statutory
26 authority for the reasons stated by the District Court in Exhibit A.

27 26. Respondent admits the factual allegations of Paragraph 26, but denies that such
28 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary

1 finding on the basis of the allegations of Paragraph 26 would exceed the Commission's statutory
2 authority for the reasons stated by the District Court in Exhibit A.

3 27. Respondent admits that the Duties owed form has unchecked boxes with respect to
4 future acts for two or more parties. Respondent denies the remaining allegations of Paragraph 27,
5 and further denies that such allegations can form the basis of any disciplinary finding. Among
6 other grounds, any disciplinary finding on the basis of the allegations of Paragraph 27 would
7 exceed the Commission's statutory authority for the reasons stated by the District Court in Exhibit
8 A.

9 28. Respondent denies the allegations of Paragraph 28, and further denies that such
10 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
11 finding on the basis of the allegations of Paragraph 28 would exceed the Commission's statutory
12 authority for the reasons stated by the District Court in Exhibit A.

13 29. Respondent admits the factual allegations of Paragraph 29, but denies that such
14 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
15 finding on the basis of the allegations of Paragraph 29 would exceed the Commission's statutory
16 authority for the reasons stated by the District Court in Exhibit A.

17 30. Respondent lacks personal knowledge regarding the allegations of Paragraph 30,
18 and is therefore unable to admit or deny them. Respondent further denies that such allegations can
19 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the
20 basis of the allegations of Paragraph 30 would exceed the Commission's statutory authority for the
21 reasons stated by the District Court in Exhibit A.

22 31. Respondent lacks personal knowledge regarding the allegations of Paragraph 31,
23 and is therefore unable to admit or deny them. Respondent further denies that such allegations can
24 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the
25 basis of the allegations of Paragraph 31 would exceed the Commission's statutory authority for the
26 reasons stated by the District Court in Exhibit A.

27 32. Respondent admits the Consent to Act form does not expressly state the property
28 address. Respondent denies the remaining allegations of Paragraph 32. Respondent further denies

1 that such allegations can form the basis of any disciplinary finding. Among other grounds, any
2 disciplinary finding on the basis of the allegations of Paragraph 32 would exceed the Commission's
3 statutory authority for the reasons stated by the District Court in Exhibit A.

4 33. Respondent denies the factual allegations of Paragraph 33, and further denies that
5 such allegations can form the basis of any disciplinary finding. Among other grounds, any
6 disciplinary finding on the basis of the allegations of Paragraph 33 would exceed the Commission's
7 statutory authority for the reasons stated by the District Court in Exhibit A.

8 34. Respondent admits that he was paid a net commission of \$16,500. Respondent
9 lacks personal knowledge regarding the remaining allegations of Paragraph 34, and is therefore
10 unable to admit or deny them. Respondent further denies that such allegations can form the basis
11 of any disciplinary finding. Among other grounds, any disciplinary finding on the basis of the
12 allegations of Paragraph 34 would exceed the Commission's statutory authority for the reasons
13 stated by the District Court in Exhibit A.

14 35. Respondent admits the factual allegations of Paragraph 35, but denies that such
15 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
16 finding on the basis of the allegations of Paragraph 35 would exceed the Commission's statutory
17 authority for the reasons stated by the District Court in Exhibit A.

18 36. Respondent denies the factual allegations of Paragraph 36, and further denies that
19 such allegations can form the basis of any disciplinary finding. Among other grounds, any
20 disciplinary finding on the basis of the allegations of Paragraph 36 would exceed the Commission's
21 statutory authority for the reasons stated by the District Court in Exhibit A.

22 37. Respondent admits the factual allegations of Paragraph 37, but denies that such
23 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
24 finding on the basis of the allegations of Paragraph 37 would exceed the Commission's authority
25 for the reasons stated by the District Court in Exhibit A.

26 38. Respondent lacks personal knowledge regarding the allegations of Paragraph 38,
27 and is therefore unable to admit or deny them. Respondent further denies that such allegations can
28 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the

1 basis of the allegations of Paragraph 38 would exceed the Commission's statutory authority for the
2 reasons stated by the District Court in Exhibit A.

3 39. Respondent lacks personal knowledge regarding the allegations of Paragraph 39,
4 and is therefore unable to admit or deny them. Respondent further denies that such allegations can
5 form the basis of any disciplinary finding. Among other grounds, any disciplinary finding on the
6 basis of the allegations of Paragraph 39 would exceed the Commission's statutory authority for the
7 reasons stated by the District Court in Exhibit A.

8 40. Respondent denies the factual allegations of Paragraph 40, and further denies that
9 such allegations can form the basis of any disciplinary finding. Among other grounds, any
10 disciplinary finding on the basis of the allegations of Paragraph 40 would exceed the Commission's
11 statutory authority for the reasons stated by the District Court in Exhibit A.

12 41. Respondent admits the factual allegations of Paragraph 41, but denies that such
13 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
14 finding on the basis of the allegations of Paragraph 41 would exceed the Commission's authority
15 for the reasons stated by the District Court in Exhibit A.

16 42. Respondent admits the factual allegations of Paragraph 42, but denies that such
17 allegations can form the basis of any disciplinary finding. Among other grounds, any disciplinary
18 finding on the basis of the allegations of Paragraph 42 would exceed the Commission's authority
19 for the reasons stated by the District Court in Exhibit A.

20 43. Respondent admits the Duties Owed form's boxes for future representation of other
21 parties is not checked. Respondent denies the remaining factual allegations of Paragraph 43, and
22 further denies that such allegations can form the basis of any disciplinary finding. Among other
23 grounds, any disciplinary finding on the basis of the allegations of Paragraph 43 would exceed the
24 Commission's authority for the reasons stated by the District Court in Exhibit A.

25 44. Respondent denies the factual allegations of Paragraph 44, and further denies that
26 such allegations can form the basis of any disciplinary finding. Among other grounds, any
27 disciplinary finding on the basis of the allegations of Paragraph 44 would exceed the Commission's
28 statutory authority for the reasons stated by the District Court in Exhibit A.

1 **DISCIPLINE AUTHORIZED**

2 2. Paragraph 2 states legal conclusions and does not require a response from the
3 Respondent; however, to the extent a response is required by rule, Respondent denies the
4 allegations of Paragraph 2.

5 3. Paragraph 3 states legal conclusions and does not require a response from the
6 Respondent; however, to the extent a response is required by rule, Respondent denies the
7 allegations of Paragraph 3.

8 4. Paragraph 4 states legal conclusions and does not require a response from the
9 Respondent; however, to the extent a response is required by rule, Respondent denies the
10 allegations of Paragraph 4.

11 5. Paragraph 5 states legal conclusions and do not require a response from the
12 Respondent; however, to the extent a response is required by rule, Respondent denies the
13 allegations of Paragraph 5.

14 6. Paragraph 6 states the Division's request and does not require a response from Respondent;
15 however, to the extent a response is required by rule, Respondent denies that the Commission is
16 authorized to take any disciplinary action against Respondent.

17 **DEFENSES & AFFIRMATIVE DEFENSES**

18 1. The Complaint fails to state a claim against the Respondent upon which relief may
19 be granted.

20 2. The Division has not and cannot meet its burden of proving that Respondent
21 engaged in any conduct for which the Commission could impose any discipline against
22 Respondent.

23 3. The Division has brought this action against Respondent for an improper purpose,
24 and the action must therefore be dismissed.

25 4. The Division is improperly engaging in selective prosecution of Marcus &
26 Millichap agents including Respondent, and the action must therefore be dismissed.

27 5. Respondent is not guilty of violating any Order of the Nevada Real Estate
28 Commission (the "Commission"), any agreement with the Nevada Real Estate Division (the

1 "Division"), or any provision of NRS 645 or any regulation adopted pursuant thereto.

2 6. The Division has failed to produce all communications, reports, affidavits, and
3 depositions in its possession which are relevant to the Complaint, and the Division's claims should
4 therefore be barred. The Division is legally required, by Nevada statute and under principles of
5 due process, to produce to Respondent all of its investigatory files. The Division has failed and
6 refused to do so, instead taking the position that it can produce only those portions of the files it
7 wishes to disclose, while withholding those portions that are helpful to Respondent's defense. In
8 withholding documents and information relevant to Respondent's defense, the Division has
9 violated its statutory obligations and deprived Respondent of his due process rights.

10 7. To the extent the Division intends to present evidence at the hearing obtained after
11 notice to Respondent, it must show that the evidence was not available after diligent investigation
12 before the time notice was given and the evidence was given or communicated to Respondent
13 immediately after it was obtained.

14 8. Respondent is not guilty of any violation because the licensing and cooperative
15 certificate scheme promulgated by the Commission and/or the Division, including NAC 645.180,
16 645.183, and 645.185, violates the United States Constitution's Commerce Clause.

17 9. Respondent is not guilty of any violation because the Commission and/or the
18 Division promulgated their licensing and cooperative certificate scheme, including NAC 645.180,
19 645.183, and 645.185, without following the required statutes, rules and regulations, including
20 without limitation:

21 a. The Commission failed to comply with the requirements for deliberating only in
22 public meetings pursuant to a duly posted agenda with sufficient opportunity for informed and
23 meaningful participation by the public, and that such public meetings include a discussion of the
24 true purpose and true effect of a proposed regulation.

25 b. The Commission and the Division failed to comply with the requirements for
26 Regulation Workshops pursuant to a duly posted agenda with sufficient opportunity for informed
27 and meaningful participation by the public, and with public discussion of the true purpose and true
28 effect of a proposed regulation.

1 c. The Commission and the Division failed to comply with the requirements for a
2 Notice of Intent to Act Upon a Regulation that includes the true purpose and need of a proposed
3 regulation, the true estimated economic effect of a proposed regulation, and the true effect on
4 federal law including the United States Constitution.

5 d. The Commission failed to comply with the requirements for written minutes of
6 meetings accurately reflecting the basis for actions taken by the Commission.

7 e. On information and belief, the Commission violated the prohibition on ex parte
8 communications regarding matters pending before the Commission.

9 f. The Commission failed to comply with the requirement that the purpose of and
10 policy behind a regulatory scheme be discussed in an open meeting and reflected in the written
11 minutes thereof.

12 g. The Division failed to comply with the requirement that its Administrator provide
13 an advisory opinion in appropriate circumstances.

14 h. The Commission and the Division failed to comply with the requirement that a
15 regulatory scheme be preceded by and supported by a duly issued and considered Small Business
16 Impact Statement.

17 i. The Commission and the Division failed to comply with the requirement under
18 NRS 233B.066 that a regulatory scheme be preceded by and supported by a Legislative Review
19 that identifies a true explanation of the need for the regulation, a true description of how public
20 comment was solicited, a true summary of public response, and a true estimate of the economic
21 effect of the regulation on the business which it is to regulate and on the public.

22 j. Respondent is not guilty of any violation because the Commission and/or the
23 Division promulgated their licensing and cooperative certificate scheme, including NAC 645.180,
24 645.183, and 645.185, without statutory authority and in violation of the NRS 645.605.

25 10. The Division failed to comply with the requirement under NAC 645.680 that the
26 complaint against Respondent be made on a standard form or affidavit or, in the alternative, the
27 Division failed to produce such form or affidavit to Respondent, in violation of the Division's
28 statutory duties and in violation of Respondent's due process rights.

1 11. The Division failed to adequately investigate the charges against Respondent. For
2 instance, the Division either failed to make any attempt to contact any consumers or any of the
3 parties to the transactions identified in the Complaint, or it contacted such consumers and parties
4 but wrongfully withheld that information from Respondent.

5 12. NRS 645.680 requires that Respondent be provided, at least 30 days prior to any
6 scheduled hearing, copies of all communications, reports, affidavits and depositions in the
7 possession of the Division relevant to the Amended Complaint. The Division and the Commission
8 have failed and refused to comply with this provision. On information and belief, the Division
9 and the Commission contend that they can produce only those records on which they intend to
10 rely, which is a plain violation of NRS 645.680, and which denies Respondent's due process rights.

11 13. The Division and the Commission have historically interpreted and enforced NAC
12 645.185 in a manner that was contradictory to the plain language of the regulation. Namely, they
13 have always precluded out of state brokers from offering real estate for sale in Nevada to a person
14 other than a resident of Nevada, even though NAC 645.185 expressly allowed out of state brokers
15 to offer real estate in Nevada for sale to a person other than a resident of Nevada.

16 14. As historically and currently interpreted by the Commission and the Division, the
17 statutes and regulations relating to out of state brokerage activities are so ambiguous as to be
18 unenforceable.

19 15. The Complaint is so ambiguous, uncertain and unintelligible that it fails to put
20 Respondent on adequate notice of the charges against him, and therefore is a denial of
21 Respondent's due process rights.

22 16. The Commission denied Respondent his due process rights by, among other things,
23 failing to comply with NRS 233B.121(4), 233B.127(3) and 645.235(4).

24 17. The Commission should be barred from adjudicating this proceeding because it has
25 demonstrated that it has not been and cannot be impartial as to current and former Marcus &
26 Millichap agents such as Respondent.

27 18. The Commission has a conflict of interest with respect to this proceeding. Among
28 other things, the Commissioners are defendants in a related lawsuit pending before the Ninth

1 Circuit Court of Appeal, and are directly adverse to Marcus & Millichap in that proceeding.

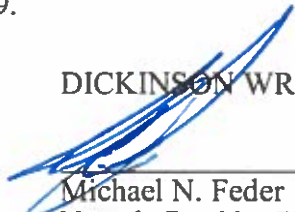
2 19. The Commission has a conflict of interest with respect to this proceeding because,
3 among other things, the Commissioners have a personal financial interest in the outcome of the
4 proceeding. To the extent the Commission and the Division succeed in their effort to exclude out-
5 of-state agents from sharing commissions for Nevada real estate transactions, the Commissioners
6 as in-state agents will and/or anticipate that they will derive personal financial gains.

7 20. The Commission should be barred from adjudicating this proceeding because it has
8 demonstrated its inability to exercise its duty of discretion and instead merely rubber stamps the
9 decisions of the Division.

10 21. The Commission should be barred from adjudicating these proceedings because it
11 is being legally advised by attorneys who have a conflict of interest. The Commission's counsel,
12 the Nevada Attorney General, represents the Commission and the Division in this proceeding, and
13 in the related state and federal court proceedings. As such, the Commission's counsel acts as
14 counsel for both the prosecution and the adjudicative body simultaneously, thereby depriving
15 Respondent of a fair and impartial proceeding.

16 DATED this 17th day of September 2019.

17
18 DICKINSON WRIGHT PLLC

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20 
21 Michael N. Feder
22 Nevada Bar No. 7332
23 8363 West Sunset Road, Suite 200
24 Las Vegas, Nevada 89113-2210
25 Tel: (702) 550-4400
26 Fax: (844) 670-6009

27 COOPER, WHITE & COOPER LLP
28 Jill B. Rowe
(Admitted Pro Hac Vice)
California Bar No. 197713
William H.G. Norman
(Admitted Pro Hac Vice)
California Bar No. 49942
201 California Street, 17th Floor
San Francisco, CA 94111
Tel: (415) 433-1900
Fax: (415) 433-5530
Attorneys for Respondent Pablo Rodriguez

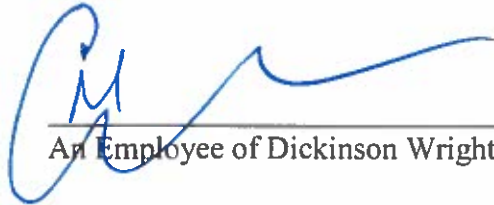
CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 17th day of September 2019, he caused a copy of the foregoing **ANSWER TO COMPLAINT** to be transmitted via hand delivery addressed to:

REAL ESTATE DIVISION
STATE OF NEVADA
Attn: Evelyn Pattee, Commission Coordinator
3300 W. Sahara Avenue, Suite 350
Las Vegas, Nevada 89102

And a copy placed in the U.S. Mail, postage prepaid and via email addressed to:

Peter K. Keegan
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701
Email: pkeegan@ag.nv.gov
Attorney for Real Estate Division



An Employee of Dickinson Wright PLLC

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EXHIBIT A

1 IN THE FIRST JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
2 IN AND FOR CARSON CITY

3 ALVIN MANSOUR,

4 Petitioner and Plaintiff,

5 vs.

6 SHARATH CHANDRA, ADMINISTRATOR,
7 REAL ESTATE DIVISION, DEPARTMENT OF
8 BUSINESS AND INDUSTRY, STATE OF
9 NEVADA; and NEVADA REAL ESTATE
10 COMMISSION, STATE OF NEVADA,

11 Respondents and Defendants.

Case No.: 18OC000411B (Consolidated)

Dept. No.: 1

2019 MAR 12 AM 10:15
ASSISTANT CLERK
CLERK

12 ORDER DENYING RESPONDENT'S MOTION TO DISMISS AND
13 MOTION FOR PARTIAL DISMISSAL AND SETTING ASIDE
14 AND REMANDING PETITIONERS' DISCIPLINARY DECISIONS

15 THIS MATTER came before the Court on February 14, 2019, for hearing on the Motion
16 to Dismiss and the Motion for Partial Dismissal (the "Dismissal Motions") filed on June 29,
17 2018 and October 26, 2018, respectively, by the Respondents, NEVADA REAL ESTATE
18 DIVISION and Administrator SHARATH CHANDRA, of the NEVADA REAL ESTATE
19 DIVISION, (collectively, the "Division").¹ The Division was represented by Brandee
20 Mooneyhan and Melissa Flatley, Deputy Attorneys General for the State of Nevada. The
21 consolidated Petitioners and Plaintiffs, ALVIN MANSOUR, KEVIN MANSOUR, GORDON
22 ROBERT ALLRED, PERRY WHITE and NENAD ZIVKOVIC (the "Mansour Petitioners"),
23 TODD MANNING ("Manning"), ANTHONY D'AMBROSIA, JOHN GLASS, GLEN
24 KUNOFSKY, EDWARD OTOCKA, GAURAB REJA, JAMES VENTURA, and PERRY WHITE
25 (the "D'Ambrosia Petitioners" and collectively with Manning and the Mansour Petitioners the
26 "Petitioners"), were represented by Katherine Hoffman of Fennemore Craig, P.C. and Jill Rowe
27 of Cooper White & Cooper, *pro hac vice*.

28 ¹ Respondent and Defendant Nevada Real Estate Commission (the "Commission") joined in the
Motion to Dismiss filed June 29, 2018, but did not join in the Motion for Partial Dismissal filed October 26,
2018.

1 The Petitioners filed Responses and Oppositions to the Dismissal Motions on July 16,
2 2018 and November 13, 2018 (the "Oppositions"). The Division filed Replies in Support of the
3 Dismissal Motions on July 27, 2018 and November 27, 2018 (the "Replies").

4 The Court, after considering the papers and pleadings on file, including the Petitioners'
5 Petitions for Judicial Review (the "Petitions"),² the Complaints for Declaratory Relief filed by
6 Manning and D'Ambrosia Petitioners (the "Complaints"), the Dismissal Motions, the
7 Oppositions, the Replies, and the oral argument of counsel at the hearing, and good cause
8 appearing therefore, makes and enters the following decision and order:

9 1. Petitioners White and Manning are Nevada real estate professionals licensed by
10 the Division. The remaining Petitioners are real estate professionals licensed in other United
11 States jurisdictions.

12 2. The Division commenced disciplinary proceedings against each of the Mansour
13 Petitioners, which were the subject of contested case hearings before the Commission on
14 December 5-6, 2017. Following the hearings, the Commission served decisions on January 26,
15 2018, finding each of the Mansour Petitioners violated NRS 645.230 and/or NRS 645.235 and
16 imposing professional discipline (the "Mansour Decisions").

17 3. The Division commenced a disciplinary proceeding against Manning, which was
18 the subject of a contested case hearing before the Commission on March 20-21, 2018. Following
19 the hearing, the Commission served a decision on April 12, 2018, finding Manning violated NRS
20 645.235(1)(b) and imposing professional discipline (the "Manning Decision").

21 4. The Division commenced disciplinary proceedings against each of the
22 D'Ambrosia Petitioners, which was the subject of a contested case hearing before the
23 Commission on June 12-14, 2018. Following the contested case, the Commission served
24 decisions on July 30, 2018, finding each of the D'Ambrosia Petitioners violated NRS 645.230
25 and/or NRS 645.235 and imposing professional discipline (together with the Mansour Decisions
26 and the Manning Decision, the "Decisions").

27 _____
28 ² The Commission did not file a notice of intent to participate in the Petitions under NRS
233B.130(3).

1 5. During the contested case proceedings before the Commission, Petitioners each
2 raised as a defense to the alleged violations of NRS 645.230 and/or NRS 645.235 that the method
3 and mode of concurrent application and administration of NRS 645.230 and/or NRS
4 645.235(1)(a) in conjunction with the application and administration of the regulatory system
5 prescribed by NAC 645.180, NAC 645.183 and NAC 645.185 (the "Cooperative Certification
6 Regulatory Framework") exceeds the Commission's statutory authority and violates the
7 Petitioners' Constitutional rights.

8 6. Specifically, the Petitioners asserted that imposing discipline for unlicensed
9 brokering activities or assisting unlicensed brokering activities under NRS 645.230 and/or
10 645.235 was unlawful where the Commission's regulations prohibited the Petitioners from
11 obtaining a cooperative certificate in violation of the United States Constitution and Nevada
12 statutes. *See, e.g., Sharath Chandra Adm'r Real Estate Div., et al. v. Gordon Robert Allred,*
13 *Case No. 2016-1734, Transcript of Proceedings at 38:11-20, 67:20-68:2 (Nev. Real Estate Comm'n*
14 *December 5, 2017); Sharath Chandra Adm'r Real Estate Div., et al. v. Todd R. Manning, Case*
15 *No. 2017-2079, Transcript of Proceedings at 11:11-18, 41:2-5 (Nev. Real Estate Comm'n March 20,*
16 *2018); Sharath Chandra Adm'r Real Estate Div., et al. v. Anthony D. D'Ambrosia, Case No.*
17 *2016-2901, Motion to Dismiss at pp. 8-13 (Nev. Real Estate Comm'n filed May 29, 2018).*

18 7. The Commission refused to hear evidence and arguments offered by Petitioners
19 regarding the alleged invalidity of the Cooperative Certification Regulatory Framework and
20 declined to evaluate or consider Petitioners' defense that the Cooperative Certification
21 Regulatory Framework exceeds the Commission's statutory authority and violates their
22 Constitutional rights. *See, e.g., Sharath Chandra Adm'r Real Estate Div., et al. v. Gordon*
23 *Robert Allred, Case No. 2016-1734, Transcript of Proceedings at 5:19-6:15 (Nev. Real Estate*
24 *Comm'n December 6, 2017); Sharath Chandra Adm'r Real Estate Div., et al. v. Todd R.*
25 *Manning, Case No. 2017-2079, Transcript of Proceedings at 41:2-5 (Nev. Real Estate Comm'n*
26 *March 20, 2018); Sharath Chandra Adm'r Real Estate Div., et al. v. Anthony D. D'Ambrosia,*
27 *Case No. 2016-2901, Transcript of Proceedings at 118:18-119:5 (Nev. Real Estate Comm'n June*
28 *13, 2018) (denying Motion to Dismiss).*

1 from filing a declaratory relief complaint under NRS 233B.110 to challenge regulations as
2 exceeding an agency's authority or violating Nevada statutes. Nevada Attorney for Injured
3 Workers v. Nevada Self-Insurers Ass'n, 126 Nev. 74, 83 n.7, 225 P.3d 1265, 1270 (2010).
4 Consequently, that Petitioners have challenged the Commission's Decisions by filing the
5 Petitions under NRS 233B.130 does not bar them from challenging the validity of the
6 Cooperative Certification Regulatory Framework through the Complaints filed pursuant to
7 NRS 233B.110.

8 12. Second, the Nevada Administrative Procedure Act (the "Act") does not prohibit
9 this Court from considering the Petitions and Complaints together. The Nevada Rules of Civil
10 Procedure ("NRCP") apply to the adjudication of the Complaints, *see* NRS 233B.110(3), and to
11 the Petitions to the extent the NRCP do not conflict with the Act, *see* NRCP 81(a). The Division
12 has not identified any authority in the Act or the NRCP which precludes Petitioners from filing
13 the Petitions and Complaints together.

14 13. Third, a declaratory judgment under NRS 233B.110 cannot be rendered until
15 after Petitioners "request the agency to pass upon the validity" of the Cooperative Certification
16 Regulatory Framework. NRS 233B.110(1). This statute does not specify a required method or
17 process for making such a request, nor does NRS 233B.110 obligate a plaintiff to file a petition to
18 amend or repeal the regulation at issue. During their disciplinary hearings, Manning and the
19 D'Ambrosia Petitioners requested that the Commission hear arguments and evidence that the
20 Cooperative Certification Regulatory Framework exceeded the Commission's statutory
21 authority and violated the Constitution, and find that the Cooperative Certification Regulatory
22 Framework was invalid. Sharath Chandra Adm'r Real Estate Div., et al. v. Todd R. Manning,
23 Case No. 2017-2079, *Transcript of Proceedings* at 11:11-18 (Nev. Real Estate Comm'n March 20,
24 2018); Sharath Chandra Adm'r Real Estate Div., et al. v. Anthony D. D'Ambrosia, Case No.
25 2016-2901, *Motion to Dismiss* at pp. 8-13 (Nev. Real Estate Comm'n filed May 29, 2018).
26 Accordingly, Manning and the D'Ambrosia Petitioners have satisfied the requirement the
27 Commission be asked to "pass upon the validity" of the Cooperative Certification Regulatory
28 Framework.

1 20. During their contested case hearings, the Commission deprived the Petitioners of
2 the opportunity to present arguments and evidence related to their claims that the Cooperative
3 Certification Regulatory Framework is unconstitutional, and/or exceeds the Commission's
4 authority and violates Nevada statutes. *See, e.g., Sharath Chandra Adm'r Real Estate Div., et al.*
5 *v. Gordon Robert Allred*, Case No. 2016-1734, *Transcript of Proceedings* at 5:19-6:15 (Nev. Real
6 Estate Comm'n December 6, 2017); *Sharath Chandra Adm'r Real Estate Div., et al. v. Todd R.*
7 *Manning*, Case No. 2017-2079, *Transcript of Proceedings* at 41:2-5 (Nev. Real Estate Comm'n
8 March 20, 2018); *Sharath Chandra Adm'r Real Estate Div., et al. v. John Glass*, Case No. 2017-
9 1473, *Transcript of Proceedings* at 60:5-63:11 (Nev. Real Estate Comm'n June 12, 2018).

10 21. The Commission did not evaluate or consider this alleged invalidity of the
11 Cooperative Certification Regulatory Framework in rendering the Decisions because the
12 Commission incorrectly concluded that such arguments are irrelevant to the disciplinary
13 proceedings for unlicensed brokering activities or assisting unlicensed brokering activities in
14 violation of NRS 645.230 and/or 645.235. *See, Todd R. Manning v. Sharath Chandra, Adm'r Real*
15 *Estate Div., et al.*, Case No. 18OC000411B (Consolidated), *Division Reply in Support of Motion to*
16 *Dismiss* (Nev. First Jud. Dist. Ct. filed July 27, 2018), at p. 2; *Anthony D. D'Ambrosia v. Sharath*
17 *Chandra, Adm'r Real Estate Div., et al.*, Case No. 18OC000411B (Consolidated), *Division Reply in*
18 *Support of Motion for Partial Dismissal* (Nev. First Jud. Dist. Ct. filed November 27, 2018), at p. 3.

19 22. The Commission's determination that the validity of the Cooperative
20 Certification Regulatory Framework is irrelevant to Petitioners' disciplinary proceedings is
21 clearly erroneous, and for the reasons discussed below, such evidence is material to the
22 Decisions.

23 23. Each of the nonresident Petitioners was disciplined for engaging in the activities
24 of a broker "without first obtaining the appropriate license or certificate" by cooperating with a
25 Nevada-licensed Petitioner to offer Nevada property for sale. *See, e.g., Sharath Chandra Adm'r*
26 *Real Estate Div., et al. v. John Glass*, Case No. 2017-1473, Decision at pp. 1-2 (Nev. Real Estate
27 Comm'n July 31, 2018). The Nevada-licensed Petitioners were correspondingly disciplined for
28 assisting this conduct. *See, e.g., Sharath Chandra Adm'r Real Estate Div., et al. v. Todd R.*

1 Manning, Case No. 2017-2079, Decision at pp. 2-3 (Nev. Real Estate Comm'n April 12, 2018).
2 The Cooperative Certification Regulatory Framework precludes the nonresident Petitioners
3 from obtaining cooperative certificates allowing them to cooperate with the Nevada-licensed
4 Petitioners to sell Nevada property. See NAC 645.185(11).

5 24. Whether the Cooperative Certification Regulatory Framework's limitation on
6 cooperative certificates unlawfully prohibits the nonresident Petitioners from obtaining "the
7 appropriate license or certificate" is relevant to determining if the Commission may discipline
8 Petitioners under NRS 645.230 and/or NRS 645.235. Put another way, if the Commission
9 determines that the Cooperative Certification Regulatory Framework improperly denied the
10 nonresident Petitioners the ability to obtain a certificate authorizing them to engage in
11 cooperative brokering with the Nevada-licensed Petitioners, this determination must be
12 considered in administering discipline for engaging in broker activities without the appropriate
13 license or certificate, or for assisting such activities. It appears to this Court that if the
14 Commission requires the nonresident Petitioners to have a cooperative certificate to engage in
15 cooperative brokering, but has unlawfully precluded the nonresident Petitioners from obtaining
16 such certificates by limiting the types of transactions eligible for cooperative certificates, then
17 the Commission cannot discipline Petitioners for engaging in or assisting with unlicensed
18 activity.

19 25. Based on the Commission's clearly erroneous determination as to the relevancy
20 of the alleged invalidity of the Cooperative Certification Regulatory Framework, the
21 Commission wrongfully denied Petitioners the opportunity to present arguments and evidence
22 on this issue during their contested case hearings. See, e.g., Sharath Chandra Adm'r Real Estate
23 Div., et al. v. Gordon Robert Allred, Case No. 2016-1734, *Transcript of Proceedings* at 5:19-6:15
24 (Nev. Real Estate Comm'n December 6, 2017); Sharath Chandra Adm'r Real Estate Div., et al.
25 v. Todd R. Manning, Case No. 2017-2079, *Transcript of Proceedings* at 60:5-64:23 (Nev. Real
26 Estate Comm'n March 21, 2018); Sharath Chandra Adm'r Real Estate Div., et al. v. John Glass,
27 Case No. 2017-1473, *Transcript of Proceedings* at 60:5-63:11 (Nev. Real Estate Comm'n June 12,
28

1 2018). Consequently, there were "good reasons" for Petitioner's failure to present this evidence
2 to the Commission. See NRS 233B.131(2).

3 26. For the forgoing reasons, Decisions are set aside and remanded to the
4 Commission for further proceedings in accordance with NRS 233B.131(2)-(3).

5 ///

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7 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

8 27. The Division's Dismissal Motions are DENIED.

9 28. The Decisions are set aside and remanded to the Commission with instructions
10 to (i) hear Petitioners' evidence and arguments with respect to whether the Cooperative
11 Certification Regulatory Framework exceeds the Commission's statutory authority, and/or
12 violates the United States Constitution's dormant commerce clause and/or Petitioners' rights of
13 association and free speech under the First and Fourteenth Amendments; (ii) determine the
14 validity of the Cooperative Certification Regulatory Framework; and (iii) apply that
15 determination to the Decisions consistent with this Order. Pending such remand, the Petitions
16 are stayed.

17 29. The Complaints are stayed pending completion of the Commission proceedings
18 required by paragraph 28.

19 IT IS SO ORDERED this 12th of March, 2019.

20
21 
22 _____
23 DISTRICT COURT JUDGE
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1 CERTIFICATE OF MAILING

2 Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District
3 Court, and that on this 12th day of March, 2019, I deposited for mailing, postage paid, at Carson
4 City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

5 Dan E. Reaser, Esq.
6 Katherine L. Hoffman, Esq.
300 E. Second Street, Suite 1510
7 Reno, NV 89501

8 Brandee Mooneyhan, Esq.
9 Deputy Attorney General
100 N. Carson Street
10 Carson City, NV 89701

11 Asheesh S. Bhalla, Esq.
12 Deputy Attorney General
555 E. Washington Ave #3900
13 Las Vegas, NV 89101-1068

14 Sharath Chandra, Administrator
15 Department of Business and Industry
Nevada Real Estate Division
16 3300 W. Sahara Avenue, Suite 350
17 Las Vegas, NV 89102

18 
19 _____
Angela Jeffries
20 Judicial Assistant, Dept. 1
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25
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