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7 **BEFORE THE REAL ESTATE COMMISSION**

8 **STATE OF NEVADA**

9 SHARATH CHANDRA, Administrator  
10 REAL ESTATE DIVISION, DEPARTMENT  
11 OF BUSINESS & INDUSTRY,  
12 STATE OF NEVADA,

**Case No.: 2017-2079**

**ANSWER TO COMPLAINT**

12 *Petitioner,*

13 vs.

14 TODD R. MANNING,

15 *Respondent.*

16 **ANSWER TO COMPLAINT**

17 COMES NOW Respondent TODD R. MANNING, by and through his counsel of record,  
18 Scott A. Marquis, Esq., and Patrick C. McDonnell, Esq., of the law firm of Marquis Aurbach  
19 Coffing, and in answer to the Complaint would show as follows:

20 **JURISDICTION**

21 Respondent denies the allegations of this paragraph.

22 **FACTUAL ALLEGATION**

- 23 1. In answer to Paragraph 1 of the Complaint, Respondent admits the allegations.
- 24 2. In answer to Paragraph 2 of the Complaint, Respondent admits that he was a  
25 broker for Marcus & Millichap Real Estate Investment Services of Nevada, Inc. (“Marcus &  
26 Millichap”). Otherwise, Respondent lacks knowledge or information sufficient to form a belief  
27 as to the truth of the allegations regarding the Division’s understanding of the relevant time  
28

1 period, and therefore denies the remaining allegations in Paragraph 2.

2 3. In answer to Paragraph 3 of the Complaint, Respondent lacks knowledge or  
3 information sufficient to form a belief as to the truth of the allegations in Paragraph 3, and  
4 therefore denies the allegations contained therein.

5 4. In answer to Paragraph 4 of the Complaint, Respondent lacks knowledge or  
6 information sufficient to form a belief as to the truth of the allegations in Paragraph 4, and  
7 therefore denies the allegations contained therein.

8 5. In answer to Paragraph 5 of the Complaint, Respondent admits that a form titled  
9 Consent to Act lists Respondent and the referenced property. Otherwise, Respondent denies any  
10 remaining allegations contained in Paragraph 5.

11 6. In answer to Paragraph 6 of the Complaint, Respondent admits that a form titled  
12 Duties Owed by a Nevada Real Estate Licensee contains the language paraphrased in Paragraph  
13 6 of the Complaint. Otherwise, Respondent denies any remaining allegations contained in  
14 Paragraph 6.

15 7. In answer to Paragraph 7 of the Complaint, Respondent admits that he signed an  
16 Interstate Brokerage Cooperation Agreement regarding commercial property located at 3695 S.  
17 Fort Apache Road, Las Vegas, Nevada. Otherwise, Respondent denies the remaining allegations  
18 of paragraph 7.

19 8. In answer to Paragraph 8 of the Complaint, Respondent admits that the referenced  
20 agreement contains the language quoted in paragraph 8. Otherwise, Respondent denies the  
21 remaining allegations of paragraph 8.

22 9. In answer to Paragraph 9 of the Complaint, Respondent admits that he signed a  
23 Representation Agreement on or about June 27, 2017. Otherwise, Respondent denies the  
24 remaining allegations of Paragraph 9.

25 10. In answer to Paragraph 10 of the Complaint, Respondent lacks knowledge or  
26 information sufficient to form a belief as to the truth of the allegations in Paragraph 10, and  
27 therefore denies the allegations contained therein.

28 11. In answer to Paragraph 11 of the Complaint, Respondent lacks knowledge or

1 information sufficient to form a belief as to the truth of the allegations in Paragraph 11, and  
2 therefore denies the allegations contained therein.

3 12. In answer to Paragraph 12 of the Complaint, Respondent states that the  
4 allegations are vague, ambiguous, and unintelligible as to the "advertising for the offering for  
5 sale" of the identified property, and on that basis denies the allegations of Paragraph 12.

6 **VIOLATION**

7 13. In answer to Paragraph 13 of the Complaint, Respondent denies the allegations  
8 contained therein.

9 **DISCIPLINE AUTHORIZED**

10 14. The allegations contained in Paragraph 14 of the Complaint state legal  
11 conclusions and do not require a response from the Respondent; however, to the extent a  
12 response is required by rule, Respondent denies the allegations that are inconsistent with the  
13 referenced statutes.

14 15. The allegations contained in Paragraph 15 of the Complaint state legal  
15 conclusions and do not require a response from the Respondent; however, to the extent a  
16 response is required by rule, Respondent denies the allegations that are inconsistent with the  
17 referenced statutes.

18 16. The allegations contained in Paragraph 16 of the Complaint state legal  
19 conclusions and do not require a response from the Respondent; however, to the extent a  
20 response is required by rule, Respondent denies the allegations that are inconsistent with the  
21 referenced statutes.

22 **DEFENSES & AFFIRMATIVE DEFENSES**

23 17. The Complaint fails to state a claim against the Respondent upon which relief  
24 may be granted.

25 18. The Respondent is not guilty of violating any Order of the Nevada Real Estate  
26 Commission, any agreement with the Nevada Real Estate Division, or any provision of NRS 645  
27 or any regulation adopted pursuant thereto.

28 19. The Respondent is not guilty of not exercising reasonable skill and care with

1 respect to all parties to the real estate transactions at issue.

2 20. To the extent the Division has failed to produce all communications, reports,  
3 affidavits, or depositions in its possession which are relevant to the Complaint, the Complaint  
4 and the Division's claims should be barred. To the extent the Division intends to present  
5 evidence at the hearing obtained after notice to Respondent, it must show that the evidence was  
6 not available after diligent investigation before the time notice was given and the evidence was  
7 given or communicated to Respondent immediately after it was obtained.

8 21. To the extent that it seeks to do so by its Complaint, the Division lacks standing to  
9 enforce any agreements identified in the Complaint to which Respondent is a party.

10 22. Respondent is not guilty of any violation because the licensing and cooperative  
11 certificate scheme promulgated by the Nevada Real Estate Commission and/or the Nevada Real  
12 Estate Division, including NAC 645.180, 645.183, and 645.185, violates the United States  
13 Constitution's Commerce Clause for essentially the reasons set forth in Respondent's Amended  
14 Complaint (which is awaiting approval for filing by the Federal Court in the currently pending  
15 lawsuit styled No. 2-16-CV-01299 *Marcus & Millichap Real Estate Investment Services of Nevada,*  
16 *Inc. et al. v. Decker et al.*, in the United States District Court for the District of Nevada, Southern  
17 Division, a copy of which is attached as **Exhibit 1** (without exhibits)).

18 23. Respondent is not guilty of any violation because the Nevada Real Estate  
19 Commission ("NREC") and/or the Nevada Real Estate Division ("NRED") promulgated their  
20 licensing and cooperative certificate scheme, including NAC 645.180, 645.183, and 645.185,  
21 without following the required statutes, rules and regulations, including without limitation:

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

26 b. NREC and NRED failed to comply with the requirements for Regulation  
27 Workshops pursuant to a duly posted agenda with sufficient opportunity for informed and  
28 meaningful participation by the public, and with public discussion of the true purpose and true

1 effect of a proposed regulation.

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

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

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

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

13 g. NRED failed to comply with the requirement that its Administrator  
14 provide an advisory opinion in appropriate circumstances.

15 h. NREC and NRED failed to comply with the requirement that a regulatory  
16 scheme be preceded by and supported by a duly issued and considered Small Business Impact  
17 Statement.

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

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

27 24. NRED failed to comply with the requirement under NAC 645.680 that the  
28 complaint against Respondent be made on a standard form or affidavit.

1           25.    NRED failed to adequately investigate the charges against Respondent. For  
2 instance, NRED failed to make any attempt to contact any consumers or any of the parties to the  
3 transactions identified in the Complaint.

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

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

15          28.    As historically and currently interpreted by NREC and NRED, the statutes and  
16 regulations relating to out of state brokerage activities are so ambiguous as to be unenforceable.

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

20          30.    NREC denied Respondent his due process rights by failing to comply with NRS  
21 §§233B.121(4), 233B.127(3), and 645.235(4).

22          31.    NREC refused to provide Respondent with an adequate opportunity to prepare so  
23 that he could more fully respond and present evidence in his defense and argument on all issues  
24 involved.

25          32.    NREC violated Nevada Administrative Code § 645.830, which states that  
26 continuances should be granted if good cause exists. Respondents are entitled to and require an  
27 adequate opportunity to prepare, so that they may fully respond and present evidence and  
28 argument on all issues involved. See, Nev. Rev. Stat. §§233B.121(4), 233B.127(3), and

1 645.235(4).

2 33. Good cause also exists for continuing the hearing from its March 20-22, 2018,  
3 dates because the respondent in the companion case to this matter had surgery for thyroid cancer  
4 on March 1, 2018, and he is an important witness for this hearing, and holding the two hearings  
5 together makes the proceedings far more efficient and cost effective for all involved.

6 34. The NREC failed to comply with statutory requirements designed to protect  
7 respondent's due process rights.

8 35. NRS 645.680(4) mandates that the respondent in a Nevada Real Estate  
9 Commission disciplinary hearing must be "given" at least written notice of the date, time and  
10 place of the hearing at least 30 days prior to the hearing. NREC failed to give Respondent such  
11 30-day notice. Specifically, here, pursuant to NRS 645.680(4), Respondent should have received  
12 the notice no later than February 17, 2018. However, Respondent's counsel did not receive the  
13 Notices until February 21, 2018, when they arrived by certified mail. Therefore, Respondent  
14 was not "given" the Notice 30 days prior to the hearing as required by statute.


15 36. NREC further denied Respondent due process by failing to timely approve  
16 Respondent's request that NREC cause the depositions of four witnesses pursuant to NRS  
17 645.730(1).

18 **AFFIRMATION**

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

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

22 MARQUIS AURBACH COFFING

23  
24 By   
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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