

ORIGINAL



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State Bar Court of California

Hearing Department

Los Angeles

PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES

<p>Counsel For The State Bar</p> <p><b>MONIQUE T. MILLER</b>  DEPUTY TRIAL COUNSEL  1149 South Hill Street  Los Angeles, California 90015-2299  213-765-1486</p> <p>Bar # 212469</p>	<p>Case Number (s)</p> <p>06-O-10738;  06-O-14219;  07-O-10612</p> <p><b>PUBLIC MATTER</b></p>	<p>(for Court's use)</p> <p><b>FILED</b></p> <p>MAR 31 2009 <i>[Signature]</i></p> <p>STATE BAR COURT  CLERK'S OFFICE  LOS ANGELES</p>
<p>Counsel For Respondent</p> <p><b>SUSAN L. MARGOLIS</b>  MARGOLIS &amp; MARGOLIS LLP  2000 Riverside Drive  Los Angeles, CA 90039  323-953-8996</p> <p>Bar # 104629</p>	<p>Submitted to: <b>Program Judge</b></p> <p><b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of:</p> <p><b>REBECCA AMELIA TAPIA</b></p> <p>Bar # 83053</p> <p>A Member of the State Bar of California  (Respondent)</p>		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- Respondent is a member of the State Bar of California, admitted **November 29, 1978**.
- The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **12** pages, excluding the order.
- A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

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- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline** [see standard 1.2(f)]
- (a)  State Bar Court case # of prior case **93-C-12612**
- (b)  Date prior discipline effective **July 27, 1997**
- (c)  Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code Sections 6101 and 6102**
- (d)  Degree of prior discipline **3 years stayed suspension; 3 years probation with 20 months actual suspension**
- (e)  If Respondent has two or more incidents of prior discipline, use space provided below:
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:        REBECCA A. TAPIA, Bar # 83053

CASE NUMBERS:            06-O-10738, 06-O-14219, and 07-O-10612

**WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY**

The parties hereby waive any variance between the Notice of Disciplinary Charges (“NDC”) filed on September 11, 2007 in Case No. 06-O-10738, and the NDC filed on September 15, 2008 in Case Nos. 06-O-14219 and 07-O-10612, and the facts and conclusions of law contained in this stipulation.

Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges relating to the cases that are the subject matter of this stipulation.

**INCORPORATION OF PRIOR STIPULATION**

This stipulation is an addendum intended to supplement the Stipulation re: Facts and Conclusions of Law in Case Nos. 03-C-05219, 03-O-03756, and 04-O-11495, which the parties lodged with this Court on January 19, 2006 (the “Prior Stipulation”). The Prior Stipulation is also incorporated as if fully set forth herein.

**FACTS AND CONCLUSIONS OF LAW IN CASE NO. 06-O-10738**

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

**FACTS**

1.     At all pertinent times herein, Respondent was employed as a contract attorney at the law firm of Brown & Associates (“firm”), in Los Angeles, California.
2.     In 2003, Biatriz Zamudio (“Zamudio”) pursued a certain wrongful termination lawsuit entitled, *Biatriz Zamudio vs. County of Los Angeles, Charles R. Drew University of Medicine & Science*, Superior Court Case no. BC272732. In October 2003, the lawsuit was dismissed against Charles Drew University (“dismissal”) after the court granted a

motion for a summary judgment.

3. Throughout the pendency of the lawsuit, until it was dismissed in approximately October 2003, Zamudio was represented by Louis Krass, Esq.
4. At all pertinent times herein, Fred H. Alschuler (“Alschuler”) was a member of the State Bar of California and employed at Brown & Associates.
5. On December 6, 2003, Zamudio went to the law offices of Brown & Associates to obtain a second legal opinion about the viability of an appeal of the dismissal. Zamudio met and consulted with Respondent Tapia. At the end of the meeting, Respondent Tapia explained to Zamudio that she would have to review the files before forming an opinion.
6. On December 18, 2003, Zamudio again met and consulted with Respondent Tapia to obtain an opinion about the viability of an appeal of the dismissal of her lawsuit. At the meeting, Alschuler was introduced to Zamudio as the attorney who would handle the litigation of her appeal because he had more experience than Respondent Tapia in appellate litigation.
7. At the end of the consultation meeting on December 18, 2003, Zamudio retained the services of the law firm, Brown & Associates. The scope of representation was expressly limited to initiating the appeal, including specifically to prepare and file the Notice of Appeal (NOA). Zamudio also expressly requested that Respondent Tapia be the assigned attorney to work on her case, as she did not want Alschuler as her attorney. Respondent Tapia agreed that she would be responsible for preparing and filing the NOA, but informed Zamudio that she would have to consult with Alschuler because of his expertise in appeals. The parties further agreed that the NOA would be prepared for Zamudio’s signature only, and it would be filed in Zamudio’s name *in propria persona*.
8. On January 15, 2004, the NOA was filed on behalf of Zamudio, *in pro per*. However, the filing fees were not paid.
9. On February 1, 2004, the court issued a notice of default in Zamudio’s appellate matter for failure to pay the filing fees. The notice of default was served on Zamudio.
10. On February 3, 2004, Drew University filed a motion to dismiss the NOA because it had been filed late. The motion to dismiss was served on Zamudio.
11. On February 7, 2004, a Saturday, Zamudio went to the law offices of Brown & Associates and personally delivered the notice of default and motion to dismiss to Alschuler who was in the office.

12. Between February 7 and February 9, 2004, Alschuler contacted Zamudio several times about the need to take action to avoid a dismissal of her appeal. Zamudio was urged to come to the office to make financial arrangements regarding attorney's fees and costs.
13. On February 9, 2004, Respondent Tapia also sent a fax to Zamudio stating that she and Alschuler will call Zamudio to discuss the notice of default and the motion to dismiss.
14. On February 10, 2004, Zamudio met with Respondent Tapia, only. During the meeting, Zamudio and Respondent Tapia agreed that the firm would perform additional services, including specifically, sending a letter to Drew University's attorneys, preparing and filing a response to the motion to dismiss, preparing and filing a designation of records in the appeal. During the meeting, Respondent Tapia reminded Zamudio that the filing fees for the NOA had not been paid, and instructed Zamudio to pay them.
15. On February 13, 2004, Zamudio terminated Respondent Tapia's and the firm's services, and terminated their agreement of February 10, 2004.
16. On February 14, 2004, Respondent Tapia faxed a letter dated February 13, 2004, to Zamudio. In the letter, Respondent Tapia acknowledged the termination of their oral legal services agreement, but stated that she would continue to complete work that had already been started, including the preparation of the opposition to the motion to dismiss, in order to prevent prejudice to Zamudio's interests.
17. On February 17, 2004, Zamudio sent a letter to Respondent Tapia informing her that she re-hired Louis Krass to be her attorney, and asked Respondent to cooperate with Mr. Krass.
18. On February 17, 2004, the court received from Brown & Associates an opposition to the motion to dismiss on behalf of Zamudio. The opposition was lodged, not filed, because the appropriate substitution of attorney had not been received.
19. On February 18, 2004, Zamudio changed her mind and signed a substitution of attorney, agreeing to designate James Earl Brown of Brown & Associates as her attorney of record.
20. On February 20, 2004, Alschuler substituted into Zamudio's appellate case as her attorney of record. Respondent Tapia did not inform Zamudio that Alschuler had substituted in as her attorney of record, despite her knowledge that Zamudio made clear that she did not want Alschuler to represent her.

21. On February 20, 2004, Alschuler filed the opposition to the motion to dismiss on behalf of Zamudio. Respondent Tapia knew that Alschuler filed the opposition. At no time did Respondent Tapia inform Zamudio that the opposition was filed.
22. On February 24, 2004, Drew University filed a reply to the opposition. The reply was served on Alschuler. Respondent Tapia knew that the reply was served on Alschuler. At no time did Respondent Tapia inform Zamudio that the reply had been served or filed.
23. On March 8, 2004, Respondent Tapia and Alschuler sent a letter to Zamudio, informing her that the court had issued a notice of default for failure to designate records on appeal. On March 10, 2004, Zamudio met with Respondent Tapia and Alschuler to discuss the need to take action about the notice of default. As a result of the discussion, Zamudio reluctantly agreed to expand the scope of the firm's services to provide her with full and unlimited scope of representation in her appellate case ("unlimited scope of representation"). However, Zamudio also expressed her continued concern about legal costs.
24. On March 11, 2004, Zamudio rescinded her agreement to grant the firm an unlimited scope of representation.
25. On March 23, 2004, Alschuler filed a response to Drew University's Reply to the opposition to motion to dismiss. Respondent Tapia knew that the response was filed. At no time did Respondent Tapia, Brown or Alschuler inform Zamudio that the response had been filed.
26. On March 23, 2004, Zamudio sent a letter to Brown informing him that Respondent Tapia and Alschuler were continually repeating their demands to sign a new fee agreement. Zamudio explained that she had already told both Respondent Tapia and Alschuler that she did not want any of the attorneys in the firm to work on her case anymore; and that she did not want to incur any more legal fees or costs. Zamudio further explained that Attorney Krass had assumed handling of her appeal.
27. On March 24, 2004, Zamudio picked up a portion of her client files from the law offices of Brown & Associates. The remaining files were released to Zamudio on April 8, 2004.
28. On April 2, 2004, Drew University filed and served a reply to the response to the motion to dismiss on Alschuler as attorney of record for Zamudio. On that date, Alschuler filed a motion for relief from default for failure to timely file designation of record. Respondent Tapia knew of both developments and did not notify Zamudio of either.
29. On May 3, 2004, the court dismissed Zamudio's appeal due to its late filing.

CONCLUSIONS OF LAW

30. By not informing Zamudio that : (i) Alschuler had become her attorney of record on February 20, 2004; (ii) the firm filed an opposition to the motion to dismiss on February 20, 2004; (iii) the opposing party filed a reply to the opposition on February 24, 2004; (iv) the opposing party filed a reply to the response to the motion to dismiss on April 2, 2004; and (v) the firm filed a motion for relief from default on April 2, 2004, Respondent Tapia failed to keep a client reasonably informed of significant developments in a matter in which Respondent Tapia had agreed to provide legal services in wilful violation of Business and Professions Code section 6068(m).

**FACTS AND CONCLUSIONS OF LAW IN CASE NO. 06-O-14219**

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

FACTS

31. At all times relevant herein, Respondent maintained a trust checking account at Citibank designated account no. 200978146 ("Citibank account").
32. At all times relevant herein, Respondent was the only authorized signatory on the Citibank account.
33. Between August 2005 and June 2006, Respondent repeatedly authorized electronic debits drawn upon her Citibank account to pay her personal and business expenses, including but not limited to the following:

<u>CHECK NUMBER</u>	<u>DATE ISSUED</u>	<u>PAYEE</u>	<u>CHECK AMOUNT</u>
Electronic Debit	08/04/05	AOL	\$ 19.95
Electronic Debit	08/04/05	AOL Premium	\$ 6.44
Electronic Debit	08/18/05	Verizon Wireless	\$266.23
Electronic Debit	09/06/05	AOL	\$ 29.95
Electronic Debit	09/06/05	AOL Premium	\$ 4.95
Electronic Debit	09/20/05	Verizon Wireless	\$211.01

Electronic Debit	11/04/05	AOL	\$ 29.95
Electronic Debit	11/04/05	AOL Premium	\$ 4.95
Electronic Debit	11/25/05	AOL	\$ 29.95
Electronic Debit	11/25/05	AOL Premium	\$ 4.95
Electronic Debit	12/27/05	AOL	\$ 29.95
Electronic Debit	12/27/05	AOL Premium	\$ 4.95
Electronic Debit	01/25/06	AOL	\$ 29.95
Electronic Debit	01/25/06	AOL Premium	\$ 4.95
Electronic Debit	02/27/06	AOL	\$ 29.95
Electronic Debit	02/27/06	AOL Premium	\$ 4.95
Electronic Debit	03/27/06	AOL	\$ 29.95
Electronic Debit	03/27/06	AOL Premium	\$ 4.95
Electronic Debit	04/25/06	AOL	\$ 29.95
Electronic Debit	04/25/06	AOL Premium	\$ 4.95
Electronic Debit	05/25/06	AOL	\$ 29.95
Electronic Debit	05/25/06	AOL Premium	\$ 4.95
Electronic Debit	06/27/06	AOL	\$ 29.95
Electronic Debit	06/27/06	AOL Premium	\$ 4.95

34. On or about August 1, 2005, Respondent issued trust account check number 175 in the amount of \$145 and made payable to Joe's Parking.
35. On or about September 2, 2005, Respondent issued trust account check number 182 to Joe's Parking in the amount of \$145.
36. On or about September 21, 2005, Respondent issued trust account check number 225 in the amount of \$54.17 and made payable to Sun Lake Drug.
37. On or about September 30, 2005, Respondent issued trust account check number 229 in the amount of \$150 and made payable to Friendly House. The memo section of trust account check number 229 stated "Oct 22".
38. On or about October 20, 2005, Respondent issued trust account check number 189 in the

amount of \$100 and made payable to Felicia Edelman. The memo section of trust account check number 189 stated "loan".

39. On or about November 8, 2005, Respondent issued trust account check number 237 in the amount of \$250 and made payable to UC Regents. The memo section of trust account check number 237 stated "Deposit".

#### CONCLUSIONS OF LAW

40. By disbursing funds from her Citibank account to pay personal and business expenses, Respondent commingled her personal funds in a bank account labeled "Trust Account," "Client's Funds Account" in wilful violation of rule 4-100(A) Rules of Professional Conduct.

#### **FACTS AND CONCLUSIONS OF LAW IN CASE NO. 07-O-10612**

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

#### FACTS

41. Between July 2006 and September 2006, Respondent authorized electronic debits drawn upon her Citibank account to pay her personal and business expenses, including but not limited to the following:

<u>CHECK NUMBER</u>	<u>DATE ISSUED</u>	<u>PAYEE</u>	<u>CHECK AMOUNT</u>
Electronic Debit	07/25/06	AOL	\$ 29.95
Electronic Debit	07/25/06	AOL Premium	\$ 4.95
Electronic Debit	08/25/06	AOL	\$ 29.95
Electronic Debit	08/25/06	AOL Premium	\$ 4.95
Electronic Debit	09/26/06	AOL	\$ 29.95
Electronic Debit	09/26/06	AOL Premium	\$ 4.95

## CONCLUSIONS OF LAW

42. By disbursing funds from her Citibank account to pay personal and business expenses, Respondent commingled her personal funds in a bank account labeled "Trust Account," "Client's Funds Account" in wilful violation of rule 4-100(A) Rules of Professional Conduct.

## **RULE 133 NOTICE OF PENDING PROCEEDINGS**

Respondent was notified in writing of any pending investigations not included in this stipulation, pursuant to Rule 133(12), on October 3, 2008.

## **POTENTIAL INCREASE IN DISCIPLINE**

Respondent understands that the matters in this addendum, being additional misconduct, may result in the Office of Chief Trial Counsel seeking – and/or the State Bar Court recommending – additional ADP conditions or increased discipline in the underlying cases. In addition, her length of participation in the court's Alternative Discipline Program may be extended.

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In the Matter of <b>REBECCA AMELIA TAPIA</b>	Case number(s): 06-O-10738; 06-O-14219; 07-O-10612
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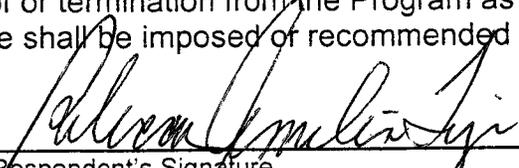
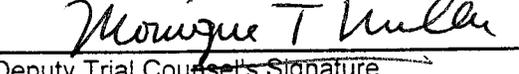
### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

\*\*\* If the Respondent is accepted into the Program, upon Respondent's ~~successful completion of or termination from~~ <sup>acceptance into</sup> the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

<u>10/28/08</u> Date	 Respondent's Signature	<u>REBECCA AMELIA TAPIA</u> Print Name
<u>10/28/08</u> Date	 Respondent's Counsel Signature	<u>SUSAN L. MARGOLIS</u> Print Name
<u>October 29, 2008</u> Date	 Deputy Trial Counsel's Signature	<u>MONIQUE T. MILLER</u> Print Name

\*\*\*Rule 803(b), Rules of Procedure of the State Bar of California, effective July 1, 2008.

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In the Matter Of <b>REBECCA AMELIA TAPIA</b>	Case Number(s): <b>06-O-10738; 06-O-14219; 07-O-10612</b>
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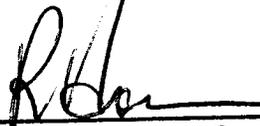
**ORDER**

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

3-20-09  
Date

  
\_\_\_\_\_  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on May 27, 2009, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SUSAN LYNN MARGOLIS  
MARGOLIS & MARGOLIS LLP  
2000 RIVERSIDE DR  
LOS ANGELES, CA 90039

- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Monique T. Miller, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 27, 2009.

  
\_\_\_\_\_  
Cristina Potter  
Case Administrator  
State Bar Court