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		State Bar Court of California Hearing Department PUBLIC MATTER Los Angeles	
Counsel For The State Bar Eli D. Morgenstern, DTC. The State Bar of California Office of the Chief Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 (213) 765-1334 Bar # 190560		Case Number (s) 07-O-14945 07-O-14946 08-O-12527 (for Court's use) <div style="text-align: center;"> FILED OCT 28 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>	
In Pro Per Respondent Eric Robert Luthi, In Pro Per 702 West Drey Drive Phoenix, AZ 85021 Tel: Bar # 160430		Submitted to: Assigned Judge	
In the Matter Of: Eric Robert Luthi Bar # 160430 A Member of the State Bar of California (Respondent)		STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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:

- (1) Respondent is a member of the State Bar of California, admitted **December 3, 1992**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **13** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

- (7) 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.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- costs added to membership fee for calendar year following effective date of discipline.
 - costs to be paid in equal amounts prior to February 1 for the following ~~membership years~~ **three billing cycles following the effective date of the Superior Court Order. See Page 10 for additional information re costs.**
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived

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
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (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. **See page 11 for further explanation re: Harm.**
- (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. **See page 11 for further explanation re: Multiple/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. **See page 11 for more information re: Candor/Cooperation.**
- (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. **See page 11 for more information re: Remorse.**
- (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. **See page 11 for more information re: Emotional/Physical Difficulties.**
- (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

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **two (2) years**.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

E. Additional Conditions of Probation:

(1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(2) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(3) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

(4) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

(5) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested,

in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

- (6) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason:
- (8) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Other Conditions:**

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A Member of the State Bar	

Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Michael A. Young	\$10,000	n/a

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of revocation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
Michael A. Young	\$400	by no later than the 15 th day of the month

c. Client Funds Certificate

- 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
 - a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

- b. Respondent has kept and maintained the following:
- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

By the foregoing conduct, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Case No. 07-O-14946

1. On June 13, 2005, Michael A. Young ("Young") met with Wes Clair ("Clair"), Respondent's employee, and employed Respondent to assist him with a child support arrears matter that arose out of the state of Minnesota. Young's wife paid Respondent the sum of \$10,000 by check payable to the "Luthi Firm Client Trust Account."
2. At no time did Respondent ever speak to Young or meet with him. During the period from in or about June 2005 to February 2007, Clair made various representations to Young concerning the status of Young's case, including that Clair had hired a Minnesota lawyer named Alex Feldman ("Feldman") to assist Young with his case and that Feldman was working to resolve the issues arising in Minnesota. In fact, Feldman was an employee of Respondent's; at no time was Feldman a member of the State Bar of Minnesota.
3. In or about February 2007, Young received a citation for driving on a license suspended due to his child support being in arrears. Young contacted Clair and Clair stated that Respondent would represent him in traffic court with respect to the license suspension.
4. In or about April 2007, Young's traffic court hearing was held regarding his suspended license. Neither Respondent nor Young appeared for the hearing. As a result, the traffic court issued a warrant for Young's arrest.
5. In or about August 2007, Young was served with the warrant that was issued by the court as a result of his failure to appear in traffic court in April 2007
6. In or about October 2007, Young mailed a letter by certified mail to Respondent's law office requesting that Respondent contact him regarding the status of his case. The letter was returned with a stamp on the envelope stating, "Return to Sender Unclaimed Unable to Forward."
7. In or about November 2007, Young appeared in traffic court with a public defender and the warrant that the court issued for his failure to appear in April 2007 was recalled.
8. Respondent did not perform any services of value for Young. Respondent did not earn any of the \$10,000 that Young paid for his legal services.

Conclusions of Law

By the foregoing conduct, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

By the foregoing conduct, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Case No. 08-O-12527

Facts

1. On January 31, 2007, Joseph Okoye ("Okoye") met with Wes Clair ("Clair"), Respondent's employee, and employed Respondent to represent him in an immigration matter. On January 31, 2007, Okoye's uncle paid Respondent the sum of \$2,000 by check payable to the "Luthi Law Firm."
2. Respondent took no action on Okoye's immigration case. In or about February 2007, Respondent misplaced Okoye's file.
3. In or about February 2008, Okoye telephoned Respondent's telephone number seeking to inquire about the status of his case and discovered that the number was disconnected.
4. Respondent did not perform any services of value on behalf of Okoye. Respondent did not earn any of the \$2,000 Okoye's uncle had paid for Respondent's legal services.
5. On February 2, 2009, Respondent provided Okoye's uncle with a refund of the \$2,000 that he had paid for Respondent to represent Okoye in his immigration matter.

Conclusions of Law

By the foregoing conduct, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

By the foregoing conduct, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 1, paragraph A(7), was October 7, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of October 7, 2010, the prosecution costs in this matter are \$3,221. The costs are to be paid in equal amounts prior to February 1 for the following three billing cycles following the effective date of the Supreme Court Order.

If Respondent fails to pay any installment within the time provided herein or as may be modified by the State Bar Court pursuant to section 6086.10, subdivision (c), the remaining balance of the costs is due and payable immediately and enforceable both as provided in Business and Professions Code

section 6140.7 and as a money judgment unless relief has been granted under the Rules of Procedure of the State Bar of California. (Rules Proc. of State Bar, rule 286.)

Respondent further acknowledges that should this stipulation be rejected, or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

AGGRAVATING CIRCUMSTANCES.

1. Multiple Acts of Misconduct

In three different client matters, Respondent failed to perform and return promptly unearned fees. Multiple acts of misconduct are an aggravating circumstance. (Std. 1.2(b)(ii).)

2. Harm

By failing to refund unearned fees to his former clients, Respondent caused financial harm to them. When an attorney causes harm to his clients, it is an aggravating circumstance. (Std. 1.2(b)(iv).)

MITIGATING CIRCUMSTANCES.

1. Emotional Difficulties

During the time that the misconduct herein was committed, Respondent was experiencing depression and sought therap. Respondent continued with his therapy through the Spring 2009. Respondent still experiences depression, but through therapy he has learned to manage it.

In addition, in February 2007, Respondent's wife underwent multiple surgeries as part of her cancer treatment.

Respondent's emotional difficulties and his rehabilitation are mitigating factors. (Std. 1.2(e)(iv).) Nonetheless, the parties submit that these difficulties do not excuse Respondent's misconduct. But, the emotional difficulties are offered as an explanation for the misconduct.

2. Candor and Cooperation

Respondent is entitled to significant mitigation for entering into this stipulation. (Std. 1.2(e)(v).)

3. Remorse

During the prosecution of this matter, Respondent admitted to his culpability, and expressed remorse for his misconduct. (Std. 1.2(e)(vii). Respondent intends to make amends for his misconduct by making restitution to Young as ordered pursuant to this stipulation.

OTHER FACTORS IN CONSIDERATION.

In February 2008, Respondent decided to close his law practice, and spent the next year attempting to finalize his existing cases.

Respondent currently lives in Arizona and teaches English to high school students in Phoenix.

AUTHORITIES SUPPORTING DISCIPLINE.

1. Standards

Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct (“Standards”) provides in pertinent part that, “[T]he primary purposes of disciplinary proceedings . . . are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.” (Std 1.3.)

Standards 2.4(b) and 2.10 apply to this proceeding.

Standard 2.4(b) provides, in pertinent part, that: “Culpability of a member of willfully failing to perform services in an individual matter . . . shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.”

There is no standard specifically applicable to a violation of rule 3-700(D)(2) of the Rules of Professional Conduct. Accordingly, the applicable standard is Standard 2.10. Standard 2.10 provides in pertinent part that, “[C]ulpability of a member . . . of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.”

2. Case Law

In *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, the Review Department held that a public reproof was appropriate discipline for an attorney who, in a single client matter, failed to refund promptly an unearned legal fee and failed to take reasonable steps to avoid prejudice to a client prior to withdrawal from representation.

In *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267, the attorney failed to perform and communicate in two client matters, and refund unearned fees in one of the matters. The Review Department recommended a two-year suspension stayed, a two-year probation period, and 30 days actual suspension.

In consideration of the facts and circumstances surrounding Respondent’s misconduct, and the aggravating and mitigating circumstances that are present, the parties submit that the intent and goals of the Standards are met in these matters by the imposition of a two year stayed suspension, and two years probation.

STATE BAR ETHICS SCHOOL.

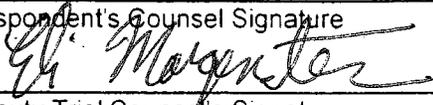
Because Respondent has agreed to attend State Bar Ethics School as part of this stipulation, he may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

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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 Fact, Conclusions of Law and Disposition.

<u>10/15/10</u> Date	 Respondent's Signature	<u>Eric Robert Luthi</u> Print Name
<u>10/19/10</u> Date	 Respondent's Counsel Signature	<u>Eli D. Morgenstern, DTC</u> Print Name
	<u>Deputy Trial Counsel's Signature</u>	<u>Print Name</u>

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In the Matter Of Eric Robert Luthi	Case Number(s): 07-O-14945; 07-O-14946; 08-O-12527
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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 stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates 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. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

10-26-10
Date


Judge of the State Bar Court

RICHARD A. PLATEL

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 October 26, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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

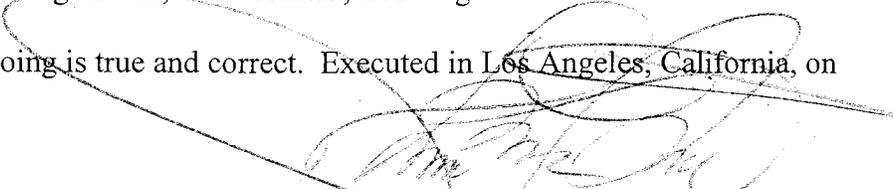
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ERIC ROBERT LUTHI
702 WEST DREY DRIVE
PHOENIX, AZ 85021

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

Eli D. Morgenstern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 26, 2010.



Johnnie Lee Smith
Case Administrator
State Bar Court