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**State Bar Court of California  
Hearing Department  
Los Angeles**

<p>Counsel For The State Bar</p> <p><b>Erin McKeown Joyce</b> Deputy Trial Counsel State Bar of California 1149 South Hill Street Los Angeles, CA 90015-2299 (213) 765-1356</p> <p>Bar # 149946</p>	<p>Case Number (s) 08-O-14675 09-O-14199</p> <p align="center"><b>PUBLIC MATTER</b></p>	<p>(for Court's use)</p> <p align="center"><b>FILED</b> OCT 19 2010 <i>AS</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p><b>Ivan Pedro C. Porto</b> 5225 Fiore Ter D110 San Diego, CA 92122</p> <p>Bar # 129629</p>	<p>Submitted to: <b>Assigned Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: <b>Ivan Pedro C. Porto</b> 5225 Fiore Ter D110 San Diego, CA 92122</p> <p>Bar # 129629</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:**

- (1) Respondent is a member of the State Bar of California, admitted **October 15, 1987**.
- (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 **11** 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".



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- (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: **2012 and 2013** (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.
- (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. **See Stipulation Attachment at page 10.**
- (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**

**See Stipulation Attachment at page 10.**

## D. Discipline:

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of **one (1) year**.

- 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.

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- (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 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:**

The attachment to the Stipulation is attached as pages 6 through 10.

## ATTACHMENT TO

### STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

**In the Matter of Ivan Pedro Porto**  
**Case Nos. 08-O-14675 and 09-O-14199**

#### **PENDING PROCEEDINGS:**

The disclosure date referred to on page two, paragraph A.(7), was September 9, 2010.

#### **Case No 08-O-14675**

#### **FACTS**

Respondent admits that the following facts are true and that he is culpable of a violation of Rule of Professional Conduct 3-110(A) as follows:

1. In December 2004, Ozenilda Pereira Costa ("Costa") employed Respondent to represent her in an asylum application matter before the United States Immigration Court in San Diego, California (the "Costa legal matter"). Costa paid Respondent an advanced fee of \$2,500 for his legal services.

2. In March 2005, Costa moved from the San Diego area to San Francisco, California. Costa provided Respondent with her new contact information to provide to the Immigration Court. Respondent received the new contact information from Costa. However, Respondent never filed a change of address for Costa with the Immigration Court.

3. On May 24, 2005, Respondent accompanied Costa to a hearing at the Immigration Court in Costa's legal matter. Because Costa speaks Portuguese, she was unable to understand what transpired at the hearing, despite her presence at the hearing. After the hearing, Respondent provided Costa with a summary of what occurred at the hearing, and informed Costa that the Judge scheduled an individual hearing in her case for February 13, 2006. He informed her that there was nothing else for her to do until the time of the February 13, 2006 hearing.

4. Respondent failed to inform Costa that during the May 24, 2005 hearing, the Judge set a deadline of September 21, 2005, for Costa to provide her fingerprints to the Department of Homeland Security ("DHS").

5. Because Respondent failed to inform Costa of the deadline to provide her fingerprints to DHS, Costa did not timely submit her fingerprints to DHS.

6. On October 5, 2005, the Judge in Costa's legal matter issued an Interim Order directing Costa to provide proof that she had timely provided her fingerprints to DHS (the "Interim Order"). The Interim Order issued because Costa had not timely submitted her fingerprints to DHS.

7. Respondent received notice of the Interim Order, but failed to notify Costa of the order and failed to file any response to the Interim Order with the court in Costa's legal matter.
8. Because Respondent failed to timely respond to the Interim Order and to ensure that Costa timely submitted her fingerprints to DHS, the court deemed Costa's application abandoned and she was ordered removed from the United States.
9. In January 2006, Costa called Respondent to make an appointment to prepare for the February 2006 scheduled hearing in the Costa legal matter. Respondent informed Costa that her hearing had already taken place on November 30, 2005. However, Respondent failed to inform Costa that the Immigration Court deemed her case as abandoned at the November 30, 2005 hearing. He further failed to inform Costa that she was ordered removed from the United States to Brazil, and that the hearing scheduled for February 13, 2006 was vacated.
10. In the same January 2006 telephone call, Respondent explained to Costa that he had moved his office and lost two (2) boxes of his client files, which included her file, in the process of his move. Respondent told Costa that he had not informed her that her case was dismissed by the Court because he did not have any contact information on her due to the loss of her file. However, Respondent informed Costa that he would file a motion to reopen her case.
11. Respondent failed to inform Costa that his motion to reopen her matter would be based on his ineffective assistance as counsel, and that Costa would have to provide a declaration in support of the motion to reopen.
12. On or about February 27, 2006, Respondent attempted to file a Motion to Admit Late Asylum Documentation, Attorney Translation, Expand Asylum Claim, Rescind Arrest Order, and to Re-calendar Hearing (the "Motion to Admit Late Filed Asylum Documentation") with the Immigration Court. The Immigration Court rejected Respondent's motion because the court had already closed Costa's matter. The Immigration Court directed Respondent to file a motion to reopen the matter. Respondent received the order rejecting the Motion to Admit Late Asylum Documentation.
13. On or about June 1, 2006, Respondent filed a motion to reopen Costa's matter with the Immigration Court. On or about June 30, 2006, the Immigration Court denied the motion to reopen Costa's matter.
14. The motion to reopen filed in Costa's matter was denied because Respondent failed to comply with the requirements for a motion to reopen due to ineffective assistance of counsel set forth in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *affd.* 857 F.2d 10 (1<sup>st</sup> Cir. 1988). The motion to reopen was not accompanied by his client's declaration, and Respondent's own declaration did not establish that he had reported his ineffective assistance of counsel to the State Bar of California. Instead, Respondent explained in his motion that "he acquired a nervous tension and irrational fear of this case which has not allowed [him] to even face it."
15. On June 30, 2006, the court denied the motion to reopen as untimely. The court further found that the untimeliness of the motion was not excused since the motion contained

no "documentation to satisfy the three prongs of the *Lozada* test." Respondent received the order denying the motion to reopen.

16. Sometime thereafter, Respondent called Costa and told her that the motion to reopen was denied but that the court's decision contained errors which would be corrected by filing an appeal. Costa agreed to have Respondent file the appeal.

17. On or about July 28, 2006, Respondent filed an Appeal with the Board of Immigration Appeals ("BIA"). In the appeal, Respondent still failed to provide a declaration of his client establishing when she learned of Respondent's ineffective assistance. The appeal gave no indication that Respondent had investigated or attempted to comply with the requirements of *Lozada*.

18. On or about December 6, 2006, the BIA dismissed Costa's appeal, and denied Costa's request for a stay of removal. Respondent received the December 6, 2006 order dismissing the appeal.

19. It was not until more than one year later, in March 2008, that Respondent called Costa and told her of the Board's decision on her appeal. Even at that point, Respondent failed to notify Costa that she had been ordered removed.

## **CONCLUSIONS OF LAW**

By failing to provide Costa's contact information to the Immigration Court, by failing to inform Costa of the requirement to submit her fingerprints, by failing to respond to the Interim Order, by filing the deficient Motion to Admit Late Filed Asylum Documentation, by filing the deficient motion to reopen, and by filing the deficient appeal with the BIA, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in wilful violation of Rule of Professional Conduct 3-110(A).

## **Case No. 09-O-14199**

## **FACTS**

Respondent admits that the following facts are true and that he is culpable of a violation of Rule of Professional Conduct 3-110(A) as follows:

1. On June 23, 2009, Jennifer Michaels ("Michaels") employed Respondent to represent her boyfriend, Moises Lopez Rivera ("Rivera"), in a criminal matter. That day Michaels signed an attorney client agreement employing Respondent, and paid Respondent \$3,000 advanced attorney fees in cash. For the payment of the \$3,000 advanced fees, Respondent agreed to provide "legal services as follows: any and all pertaining to the case, all including plea deals w/ government [sic] identity."

2. At the time she hired Respondent, Michaels notified Respondent of the upcoming hearing date in Rivera's criminal case set for July 7, 2009. Respondent agreed to attend the hearing.

3. On July 7, 2009, failed to appear at the July 7, 2009 hearing.

4. Shortly thereafter, Michaels contacted Respondent about why he failed to appear at the hearing. Respondent did not have an explanation for why he failed to appear.

5. After failing to appear on July 7, 2009, Respondent appeared at a subsequent hearing that July in Rivera's criminal case and in an in-chambers conference, Respondent represented to the Court that he did not represent Rivera in Rivera's criminal case.

6. The only legal work Respondent performed in Rivera's legal matter was to meet with Rivera while he was incarcerated to discuss Rivera's case. Respondent never became attorney of record for Rivera in Rivera's criminal case.

## CONCLUSIONS OF LAW

By failing to appear in court on Rivera's criminal case on July 7, 2009, and failing to represent Rivera in his criminal case as he was employed to do, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in wilful violation of Rule of Professional Conduct 3-110(A).

## AUTHORITIES SUPPORTING DISCIPLINE

### STANDARDS FOR ATTORNEY SANCTIONS

To determine the appropriate level of discipline, the standards provide guidance. *Drociak v. State Bar* (1991) 52 Cal.3d 1085; *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119. A disciplinary recommendation must be consistent with the discipline in similar proceedings. See *Snyder v. State Bar* (1990) 49 Cal.3d 1302. Moreover, the recommended discipline must rest upon a balanced consideration of relevant factors. *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119.

Pursuant to Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct 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. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

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Pursuant to Standard 1.5 of the Standards for Attorney Sanctions for Professional Misconduct:

Reasonable duties or conditions fairly related to the acts of professional misconduct and surrounding circumstances found or acknowledged by the member may be added to a recommendation or suspension or, pursuant to rule 9.19, California Rules of Court, to a reproof. Said duties may include, but are not limited to, any of the following:

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1.5(b): a requirement that the member take and pass an examination in professional responsibility;

1.5(d): a requirement that the member undertake educational or rehabilitative work at his or her own expense regarding one or more fields of substantive law or law office management;

1.5(f): any other duty or condition consistent with the purposes of imposing a sanction for professional misconduct as set forth in standard 1.3.

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Pursuant to Standard 2.10 of the Standards for Attorney Sanctions for Professional Misconduct:

Culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or 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 the offense, or harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

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The stipulated discipline in this matter of a one year stayed suspension, with a two year probation is appropriate in this matter. *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. Respondent has acknowledged violating Rule of Professional Conduct 3-110(A) in two separate client matters. The stayed suspension agreed between the parties should adequately address Respondent's admitted misconduct.

## **DISMISSALS**

The State Bar agrees to dismiss Count Two and Count Four in the interests of justice.

## **FACTS SUPPORTING MITIGATION**

Respondent has met with the State Bar and agreed to this Stipulation to fully resolve these cases. Accordingly, he is entitled to mitigation for his candor and cooperation.

Respondent has been admitted to practice for 23 years, and has no prior record of discipline.

## **COSTS OF DISCIPLINARY PROCEEDINGS:**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of September 9, 2010, the prosecution costs in this matter are \$2,915.00. 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.



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In the Matter Of  <b>Ivan Pedro C. Porto</b>	Case Number(s):  <b>08-O-14675 and 09-O-14199</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 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.)**

10-18-10  
Date

  
Judge of the State Bar Court

**RICHARD A. HONN**

**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 19, 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:

IVAN PEDRO C PORTO  
5225 FIORE TER D110  
SAN DIEGO, CA 92122

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

by overnight mail at , California, addressed as follows:

by fax transmission, at fax number . No error was reported by the fax machine that I used.

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:

Erin M. Joyce, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 19, 2010.



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Cristina Potter  
Case Administrator  
State Bar Court