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State Bar Court of California
Hearing Department
Los Angeles

Counsel For The State Bar Melanie J. Lawrence 1149 South Hill Street Los Angeles, CA 90015 (213)765-1066	Case Number (s) 09-O-11260 et.al	(for Court's use)
Bar # 230102	PUBLIC MATTER	FILED OCT 06 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent Mark Alan Shoemaker P.O. Box 26227 Santa Ana, CA 92799		
Bar # 134828	Submitted to: Settlement Judge	
In the Matter of: Mark Alan Shoemaker	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT	
Bar # 134828	DISBARMENT	
A Member of the State Bar of California (Respondent)	<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 **June 14, 1988**.
- (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 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."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."



(Do not write above this line.)

- (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 to be awarded to the State Bar
 - Costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - Costs entirely waived
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 220(c).

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**
- (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:
- (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. **See attachment.**
- (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:

D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (2) **Restitution:** Respondent must make restitution to **see attached** in the amount of \$ **see attached** plus 10 percent interest per year from **see attached**. If the Client Security Fund has reimbursed **see attached** for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than **see attached** days from the effective date of the Supreme Court order in this case.

- (3) **Client Security Fund Reimbursement:** Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment obligation is enforceable as provided under Business and Professions Code section 6140.5.

- (4) **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MARK ALAN SHOEMAKER

CASE NUMBER(S): 09-O-11260, 09-O-11738, 09-O-13169,
09-O-13333, 09-O-13355, 09-O-14257,
09-O-14590, 09-O-15141, 09-O-16502,
09-O-16582, 09-O-17353, 09-O-17354,
09-O-13906, 09-O-14438, 09-O-18692,
10-O-00203, 10-O-00347, 10-O-00772

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

The parties waive any variance between the Notice of Disciplinary Charges and the facts and/or conclusions of law contained in this stipulation and waive the issuance of an Amended Notice of Disciplinary Charges. The parties further waive the right to the filing of an Amended Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

FACTS AND CONCLUSIONS OF LAW.

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

STATEMENT OF FACTS:

1. On January 28, 2008, Respondent filed Articles of Organization for Advocate For Fair Lending, LLC. (hereinafter, "Advocate" or "AFFL") Respondent was and has continuously been, the owner and president of AFFL.
2. Respondent marketed AFFL as a business that helped "home owners that are trapped in their mortgages," that AFFL could "reduce your payments, interest and principal balance without refinancing your home," and that AFFL had "a team of attorneys that specialize in mortgage loans." Respondent marketed AFFL primarily through mortgage brokers – many who became "net branches" of AFFL's "corporate office." A "net branch" was responsible for selling the AFFL service and in turn, received a commission on those sales. Clients paid monthly payments for three months to AFFL in an amount that was 70% of their monthly mortgage with a minimum monthly payment of \$1,000.
3. AFFL clients were required to sign an agreement and a "Limited Power of Attorney."
4. While the AFFL client agreement stated it was "not engaged in loan modification services" and "is not a law firm" it also stated that the services included, "analyze every client loan. . ."

“initiate legal action if necessary,” “demand appropriate revision of Client’s loan as appropriate based upon details of the audit process,” and “rescind Client loan as appropriate.”

5. Once a client was signed-up with AFFL, they or AFFL on their behalf, would retrieve relevant mortgage loan documents from the lender. Thereafter, AFFL “auditors” would “audit” the loan documents using a software program in order to indentify certain violations within those documents, in particular violations of the Federal Truth in Lending Act (“TILA”). If violations were found, AFFL would then send a “demand” letter to the lender stating that violations had been found and offering a “settlement” in the form of a loan “restructure.” Further, the letter included a statement that if the offer was not accepted, the loan would be “rescinded according to the law. . . .”
6. The AFFL loan audits, even if performed, had no value to clients. At the time Respondent formed AFFL for the purpose of conducting loan audits, he knew that the controlling authority in this jurisdiction (and in others) has held that a mortgagee’s security interest does not become automatically void upon a mortgager’s notice that they were exercising their right to rescind the loan based upon alleged TILA violations and that before ordering rescission, the court has the discretion to (and often does) require that mortgagors provide proof of their ability to repay loan proceeds if rescission is granted. Respondent did not tell clients of that fact.
7. Instead, the AFFL client agreement mischaracterizes rescission as “. . . Client may be required to give back the property to the lender, which means the Client would have to move away from the property if the Client resides at the property.” Further, AFFL’s marketing materials describe rescission as “In simple terms the mortgage never happened. You may walk away from your house and get back all the monies you invested, including any upgrades. You may even end up owning your home without a mortgage.”
8. After the demand/settlement letter was sent to a lender it often, if not always, went unanswered. The AFFL client was then told legal action would be necessary and that they would need to hire an attorney. Respondent was often the attorney offered as an option. Respondent would then agree to represent the client for \$1,000 which he characterized as “costs” or “expenses” but which were never deposited into a CTA. His retainer agreement described that he would “look to the opposing parties and the court for an award of attorney’s fees” and that the client would not be responsible for any amount above that originally charged.
9. In addition, during the process of the “audit” many AFFL clients received Notices of Default and later Notices of Sale. In some instances despite the fact that foreclosure proceedings were taking place, Respondent did little, if anything, to stop the proceedings. In other instances Respondent or an agent of his, would tell the clients they then needed to hire an attorney – in particular, Respondent. While Respondent may have managed to delay some foreclosure proceedings, he did not permanently stop any of them.
10. None of the complaining witnesses received a loan modification or “restructuring” as a result of their participation in the audit. None of the complaining witnesses were able to rescind their loans. Many of them lost their homes. A few of them received refunds of the money they paid – some after taking Respondent to small claims court.
11. Based upon the marketing, the documents the clients were required to sign, and other information, clients believed they were hiring Respondent and/or AFFL with their “team of

attorneys” to perform an audit in order to obtain a “restructuring,” “modification,” or some change in their mortgage loan terms. Those clients include:

CASE NUMBER	CLIENT	DATE CLIENT HIRED RESPONDENT/AFFL	TOTAL FEES CLIENT PAID
09-O-11260	Carnetta McGhee	October 30, 2008	\$2,000
09-O-11738	Lupe Fabros	July 2008	\$2,000
09-O-13169	Ruben Tostado	August 2008	\$7,215
09-O-13333	Ronald Williams	April 30, 2008	\$5,500
09-O-13355	Barbara Romo	November 10, 2008	\$4,956
09-O-14257	Martin Moreno	January 2, 2009	\$2,000
09-O-14590	Keith Jeske	November 3, 2008	\$3,152

09-O-15141	Elizabeth Nunez	May 30, 2009	\$2,500
09-O-16502	Brenda Factor	August 28, 2008	\$5,500
09-O-16582	Carlos Padilla	December 10, 2008	\$6,090
09-O-17353	Mack Cleveland	June 13, 2008	\$3,400
09-O-17354	Darius Pinkney	October 8, 2008	\$4,000
09-O-13906	Dionisia Saravia	November 11, 2008	\$6,666
09-O-14438	Diana Castro	November 22, 2008	\$2,621
09-O-18692	Wanda Miranda	December 30, 2008	\$4,000
10-O-00203	Betty Johnson	August 14, 2008	\$3,869.27
10-O-00347	Maria Ramirez	November 11, 2008	\$4,000
10-O-00772	Mario Felix	October 28, 2008	\$3,000

12. Respondent failed to obtain any loan “restructure,” “modification,” or other change for any of the clients listed above, and failed to perform any other legal services of value to the clients listed above in connection with any loan “restructure,” “modification,” or other change. Thus, Respondent did not earn all of the advanced fees and/or costs paid by the clients.

13. To date, Respondent has refunded:

- All fees paid by Carnetta McGhee, after she filed a small claims suit against AFFL;
- \$1,000 of the \$2,000 paid by Lupe Fabros;
- \$1,652 of the \$4,956 paid by Barbara Romo;
- All fees paid by Brenda Factor, after she filed a small claims suit against AFFL

14. Many of the above listed clients repeatedly attempted to communicate with Respondent or his staff without success.

15. None of the above listed clients received an accounting of the fees and/or costs they paid Respondent/AFFL.

16. Some of the above listed clients requested that their files be returned to them, to no avail.

17. After having paid all of the fees and costs required of them, both Wanda Miranda and Maria Ramirez each received letters from Respondent informing them that "due to economic considerations" his law office could not continue to represent them unless they paid him an additional \$2,500.
18. Some AFFL clients, including Mario Felix, met with non-attorney employees or agents of Respondent/AFFL from who they received legal advice. In the case of Mario Felix, the non-attorney employee/agent, reviewed Felix's loan documents, pointed out a number of alleged errors in them, told him he had a right to rescind his mortgage, and told him he had a 90% chance of saving his home if he exercised his right of rescission. That review, analysis, and advice constituted the unauthorized practice of law. Respondent knew, or was grossly negligent in not knowing, that non-attorney employees/agents were conducting such review and analysis and giving such advice.

CONCLUSIONS OF LAW

By not performing any legal services of value for any of the above listed clients, including but not limited to, negotiating and obtaining a home mortgage "restructure," "modification," or any other change, 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 failing to refund promptly any part of the advanced fees or costs each of the above listed clients paid, despite not having earned that fee or expended those costs, Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct.

By failing to respond to his clients' repeated inquiries regarding the status of their cases, Respondent failed to adequately communicate with his clients in willful violation of section 6068(m) of the Business and Professions Code.

By failing to provide his clients with an accounting of advanced fees and/or costs they paid, Respondent willfully failed to render appropriate accounts to his clients in willful violation of rule 4-100(B)(3) of the Rules of Professional Conduct.

By failing to promptly release his clients files, when so requested, Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct.

By demanding that Wanda Miranda and Maria Ramirez pay him an additional \$2,500 to continue to represent them, after they had already paid all fees and costs required of them, Respondent willfully charged the two clients an unconscionable fee in willful violation of rule 4-200(A) of the Rules of Professional Conduct and engaged in an act of overreaching in willful violation of section 6106 of the Business and Professions Code.

By failing to deposit the advanced costs clients paid into a client trust account, Respondent willfully violated, rule 4-100(A) of the Rules of Professional Conduct.

By permitting a non-attorney employee/agent to review and analyze loan documentation and provide a client with a legal opinion as to his entitlement to rescission, Respondent willfully

aided a non-attorney in the unauthorized practice of law in willful violation of rule 1-300(A) of the Rules of Professional Conduct.

AGGRAVATING CIRCUMSTANCES.

Respondent's clients were seriously harmed by the above described misconduct. Most, if not all, of the clients who hired Respondent/AFFL did so because they were financially distressed. Thus, the loss of the use of the money they paid for services that were not performed or had no value, caused significant harm to Respondent's clients. A number of the clients ultimately lost their homes.

Respondent's misconduct involves 18 separate client matters constituting multiple acts of misconduct and demonstrates a pattern of willfully failing to perform services and a habitual disregard for his clients, demonstrating an abandonment of the causes in which he was retained.

MITIGATING CIRCUMSTANCES.

Although the misconduct is serious, Respondent has no prior discipline in twenty-two years of practice.

AUTHORITIES SUPPORTING DISCIPLINE.

In *In re Ronald Robert Silverton* (2005) 36 Cal.4th 81, the California Supreme Court discussed the fact that the Standards for Attorney Sanctions for Professional Misconduct are entitled to great weight and the State Bar Court should follow their guidance whenever possible. (*Id.* at 92.)

Standard 1.3 provides that the primary purposes of attorney discipline are, "the protection of the public, the courts and the legal profession; the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession."

Standard 1.6(a) states that where two or more acts of professional misconduct are charged and different sanctions are prescribed by the standards for the acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.

Standard 2.4(a) requires disbarment for a pattern of willfully failing to perform services demonstrating the member's abandonment of the causes in which he was retained.

Habitual disregard by an attorney for the interests of his clients combined with failure to communicate with such clients justifies disbarment. (*Twohy v. State Bar* (1989) 48 Cal. 3d 502, 512.) Even when such neglect is grossly negligent or careless, disbarment is justified. (*Farnham v. State Bar* (1988) 47 Cal.3d 429, 446.) Abandonment of numerous clients is the appropriate level of discipline even where the attorney has no prior record of discipline. (*See Coombs v. State Bar* (1989) 49 Cal.3d 679.)

In the present matter, Respondent's misconduct resulted in significant harm to multiple clients. The misconduct constituted a pattern of willfully failing to perform and a habitual disregard for his client's interests and included failing to communicate, failing to refund unearned fees, and other misconduct. Disbarment here, is appropriate.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
09-O-11260 et.al.	75	B&PC section 6106
09-O-11260 et.al.	76	B&PC section 6106

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of September 14, 2010, the prosecution costs in this matter are estimated at \$ 14,917.84. 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.

FINANCIAL CONDITIONS, RESTITUTION

Respondent must pay restitution to the clients listed in the above chart of the principal amounts paid, less any refund Respondent has already made as referenced in paragraph 13 of this attachment, plus interest of 10 percent per annum calculated from the date the client paid Respondent. If the Client Security Fund ("CSF") has reimbursed any of the clients for all or any portion of the amounts listed above, Respondent must reimburse CSF in the amounts paid, plus applicable interest and costs.

PENDING PROCEEDINGS.

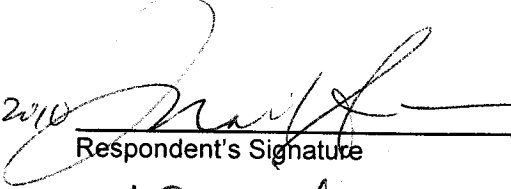
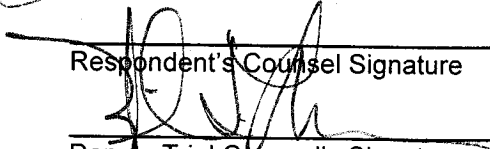
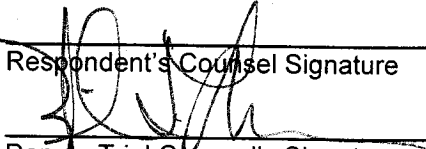
The disclosure date referred to, on page 2, paragraph A(7), was September 15, 2010.

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In the Matter of Mark Alan Shoemaker	Case number(s): 09-O-11260 et.al.
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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>September 23, 2010</u> Date	 Respondent's Signature	<u>MARK ALAN SHOEMAKER</u> Print Name
<u>9/23/10</u> Date	 Respondent's Counsel Signature	<u>Melanie J. Lawrence</u> Print Name
<u>9/23/10</u> Date	 Deputy Trial Counsel's Signature	<u>Melanie J. Lawrence</u> Print Name

(Do not write above this line.)

In the Matter of Mark Alan Shoemaker	Case Number(s): 09-O-11260, etc.
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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.)**

Respondent **Mark Alan Shoemaker** is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 490(b) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

09-30-10
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 6, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

MARK A. SHOEMAKER
MARK ALAN SHOEMAKER
PO BOX 26227
SANTA ANA, CA 92799

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:

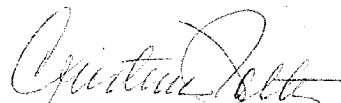
by fax transmission, at fax number . No error was reported by the fax machine that I used.

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:

Melanie J. Lawrence, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 6, 2010.



Cristina Potter
Case Administrator
State Bar Court