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| State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION | | |
| Counsel For The State Bar Jean Cha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1000 Bar # 228137 | Case Number(s): 09-O-16004 | For Court use only <div style="text-align: center;"> PUBLIC MATTER FILED APR 14 2011 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO </div> |
| In Pro Per Respondent Duane D'Roy Dade PO Box 1111 Rancho Cucamong, CA 91730 (909) 239-8244 Bar # 140379 | Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED | |
| In the Matter of: Duane D'Roy Dade Bar # 140379 A Member of the State Bar of California (Respondent) | | |

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 6, 1989.
- (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".
- (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):
- ☐ Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: 2012, 2013 & 2014 which is three Billing Cycles Following the Effective Date of the Supreme Court Order.. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are 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 S184688
 - (b) ☒ Date prior discipline effective 10/28/2010
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code section 6106, Rules of Professional Conduct rule 4-100(B)(4); & rule 3-100(A).
 - (d) ☒ Degree of prior discipline Discipline Three Years Stayed Suspension, Three Years Probation, and Two Years Actual Suspension, and until Std. 1.4(c)(ii) is satisfied.
 - (e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below.

State Bar Case Number 05-O-02787 Cons. 07-O-10783, effective 5/29/2010. Rules of Professional Conduct, rules 4-100(B)(1), 4-100(B)(4), Business and Professions Code sections 6103, 6106, 6068(a), 6125, 6126, 6068(d), and 6068(m). Discipline Three Years Stayed Suspension, Three Years Probation, and Two Years Actual Suspension, and until Std. 1.4(c)(ii) is satisfied.

State Bar Case Numbers 95-O-18057, 96-O-03763 & 96-O-03673, Supreme Court Order S082044, effective 12/19/1999. Rules of Professional Conduct, rule 4-100(A). Two Years Stayed Suspension, Two Years Probation, 60 Days Actual Suspension with Restitution.

- (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.

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- (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. Respondent has agreed to discipline and acknowledges his wrongdoing.
- (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.

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- (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 THREE 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:
- (b) ☒ The above-referenced suspension is stayed.
- (2) ☒ **Probation:**
- Respondent must be placed on probation for a period of THREE YEARS, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) ☒ **Actual Suspension:**
- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of TWO 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:

E. Additional Conditions of Probation:

- (1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ 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.
- (4) ☒ 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.
- (5) ☒ 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.

- (6) ☐ 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.
- (7) ☒ 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.
- (8) ☒ 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 Ethics School, and passage of the test given at the end of that session.

☐ No Ethics School recommended. Reason: .

- (9) ☐ 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.

- (10) ☐ The following conditions are attached hereto and incorporated:

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| <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 during the period of actual suspension or within one year, whichever period is longer. **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 5.162(A) & (E), Rules of Procedure.**
- ☐ No MPRE recommended. Reason:
- (2) ☒ **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.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she 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 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) ☐ **Other Conditions:**

Attachment language (if any):

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

IN THE MATTER OF: **DUANE D'ROY DADE, 140379**
CASE NUMBER: **09-O-16004**

Respondent admits the facts set forth in the stipulation are true and that he is culpable of violations of the specified statutes and Rules of Professional Conduct.

09-O-16004 – Millender Matter

FACTS

1. In December 2005, Elbert D. Millender ("Millender") employed Respondent to represent him in a civil matter.
2. On September 28, 2006, Respondent filed a civil complaint on Millender's behalf entitled *Elbert Millender v. Cardio Vascular Plus Inc. et. al.*, in Riverside County Superior Court, case no. RIC457734 (the "civil action").
3. On December 28, 2006, the court in the civil action set an Order to Show Cause for March 14, 2007 regarding why sanctions of \$150 should not be ordered for plaintiff's failure to file a proof of service of summons. On January 26, 2007, the court in the civil action served Respondent with the December 28, 2006 minute order. Respondent received the minute order.
4. On January 3, 2007, the State Bar Court of California properly served Respondent's counsel with an order notifying Respondent that he would be enrolled as an inactive member of the State Bar of California effective February 13, 2007 pursuant to Business and Professions Code section 6233. Respondent received notice of his enrollment to inactive status but did not inform Millender that he would be enrolled inactive on February 13, 2007.
5. On February 13, 2007, Respondent was enrolled as an inactive member of the State Bar of California. Respondent was on inactive status from February 13, 2007 to September 21, 2007.

6. At no time did Respondent notify Millender that he was enrolled as an inactive member of the State Bar of California. At no time did Respondent notify Richard D. Roth ("Roth"), the opposing counsel in the civil action, or the court in the civil action that he had been enrolled as an inactive member of the State Bar of California.

7. From February 20, 2007 to May 2007, Roth served Respondent with documents filed with the court in the civil action, including defendant's answer to the complaint. Respondent received the documents but did not inform opposing counsel that he was inactive.

8. In April 2007, Millender telephoned Respondent's law office and found the telephone number disconnected. Thereafter, Millender went to Respondent's law office and found the office closed. Millender subsequently learned that Respondent had moved from his law office. Respondent did not provide Millender with a new address.

9. On March 12, 2007, Respondent, on behalf of Millender and while on inactive status, filed the proof of service of summons in the civil action. On the proof of service, Respondent held himself out as "Duane D. Dade, ESQ." and as the attorney for Millender.

10. On May 17, 2007, Respondent updated his membership records information with the State Bar of California but did not update Millender.

11. In May 2007, Roth attempted to serve a Notice of Deposition on Respondent, but the notice was returned by the post office. On May 23, 2007, Roth's law office checked Respondent's membership information on the State Bar website and discovered that Respondent had been placed on inactive status effective February 13, 2007.

12. On May 24, 2007, Roth wrote Millender informing him that Respondent was inactive status and told Millender that he needed to obtain new counsel.

13. On June 5, 2007, Roth filed a Notice to Plaintiff to Secure Representation or to Appear In Pro Per with the court in the civil action based on Respondent's inactive status.

14. On August 7, 2007, Millender filed a substitution removing Respondent as counsel and appearing pro per. On September 10, 2007, Attorney Bradley White, substitution into Millender's civil action.

CONCLUSION OF LAW

15. By not informing Millender that he was on inactive status and therefore was unable to represent Millender in the civil action, by disconnecting his telephone without providing a new number to Millender and by moving from his law office without providing Millender with updated contacted information, Respondent ceased representing Millender in the civil action and failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in willful violation of Rules of Professional Conduct rule 3-700(A)(2).

16. By filing a document with the court in the civil action when he was not an active member of the State Bar of California and by holding himself as an attorney entitled to practice law in California when he was not entitled, Respondent failed to support the Constitution and laws of the United States and of this state in willful violation of Business and Professions Code section 6068(a).

AUTHORITIES.

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; Std. 1.3.)

Standard 2.4(b) of the Standards for Attorney Sanctions for Professional Misconduct, Rules Proc. Of State Bar, Title IV, provides for reproof or suspension for a failure to perform, in this case an improper withdrawal. Standard 2.6 provides for suspension or disbarment for a violation of Business and Professions Code section 6068(a). Standard 1.7(b) provides for deviation from disbarment where compelling mitigating circumstances clearly predominate or where disbarment would be unduly harsh. The standards are guidelines (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628) and afforded great weight (*In re Silverton* (2005) 36 Cal.4th 81, 91-92), they are not applied in a talismanic fashion (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994).

Here, the aggravating force of Respondent's prior discipline is diminished because the underlying misconduct occurred during the same time period and contemporaneous with the misconduct in the prior case. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal.State Bar Ct. Rptr. 602, 619.) Had the present misconduct addressed by this stipulation been heard and tried in the same disciplinary proceeding as State Bar Case Nos. 05-O-02787 & 07-O-10783, and in consideration of the totality of the findings, the purposes of attorney discipline does not necessitate imposing discipline in the current proceeding greater than 2 years actual suspension.

PENDING PROCEEDINGS.

The disclosure date referred to, on page two, paragraph A.(7), was March 23, 2011.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that he was informed that as of March 23, 2011, the estimated prosecution costs in this matter are approximately \$3,269.00. Respondent acknowledges that this figure is an estimate only and that it might not include State Bar Court costs (see Bus. & Prof. Code section 6068.10(c)) or taxable costs (see C.C.P. section 1033.5(a)), which will be included in any final cost assessment. Respondent further acknowledges that if this stipulation is rejected or if relief from the stipulation is granted, the costs may increase due to further proceedings. Note that if Respondent fails to pay any installment of disciplinary costs 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 unless relief has been granted under the Rules of Procedure of the State Bar of California (Rules Proc. of State Bar, rule 5.130 (old rule 286)). Payment of costs is enforceable as provided in Business and Professions Code section 6140.7 and as a money judgment.

ETHICS SCHOOL.

Because Respondent has agreed to attend State Bar of California Ethics School as part of this stipulation, Respondent will receive Minimum Continuing Legal Education credit upon the satisfactory completion of these courses and submission of proof of completion to the Office of Probation.


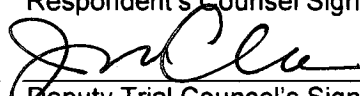
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In the Matter of:
Duane D'Roy Dade

Case number(s):
09-O-16004

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, Conclusions of Law, and Disposition.

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| <u>3/24/11</u> Date |  Respondent's Signature | <u>Duane D. Dade</u> Print Name |
| <u>N/A</u> Date | <u>N/A</u> Respondent's Counsel Signature | <u>N/A</u> Print Name |
| <u>3/28/11</u> Date |  Deputy Trial Counsel's Signature | <u>Jean Cha</u> Print Name |

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(Do not write above this line.)

In the Matter of:
Duane D'Roy Dade

Case Number(s):
09-O-16004

ACTUAL SUSPENSION 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:

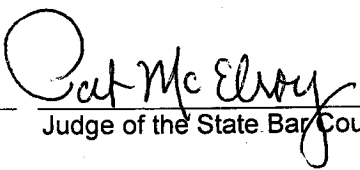
- ☐ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

1. On page 2, section, B(1)(a): include Supreme Court order no. S180413 (State Bar Court case no. 07-O-12622);
2. On page 2, section, B(1)(d): include "and until restitution" to the actual suspension; and
3. On page 2, section, B.(1)e), regarding discipline effective May 29, 2010: include Supreme Court order no. S180413.

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 5.58(E) & (F), 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.)**

Date

April 14, 2011


Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 San Francisco, on April 14, 2011, I deposited a true copy of the following document(s):

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

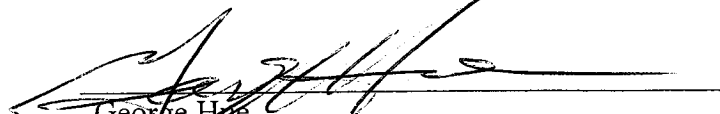
in a sealed envelope for collection and mailing on that date as follows:

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

DUANE D. DADE
PO BOX 1111
RANCHO CUCAMONGA, CA 91730
- ☐ 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:

Jean Cha, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 14, 2011.


George Hae
Case Administrator
State Bar Court