

State Bar Court of California
Hearing Department
Los Angeles

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<p>Counsel For The State Bar</p> <p>Elina Kreditor Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015</p> <p>Bar # 250641</p>	<p>Case Number (s) 09-O-18479</p> <p>PUBLIC MATTER</p>	<p>(for Court's use)</p> <p>FILED NOV - 3 2010 <i>[Signature]</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Susan L. Margolis Margolis & Margolis LLP 2000 Riverside Drive Los Angeles, CA 90039-3758</p>	<p>Submitted to: Settlement Judge</p>	
<p>Bar # 104629</p> <p>In the Matter Of: Clay E. Presley</p> <p>Bar # 174277</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 December 13, 1994.
- (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 284, Rules of Procedure.
 - costs to be paid in equal amounts prior to February 1 for the following membership years: two membership cycles following the effective date of discipline.
(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 03-O-01470
 - (b) Date prior discipline effective April 8, 2004
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rules 1-400(D) and 3-110(A)
 - (d) Degree of prior discipline Private Reprimand
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.

State Bar Court Case # 06-O-11624; Discipline Effective November 14, 2008, Respondent violated Rule 3-110(A) of the Rules of Professional Conduct and section 6068(m) of the Business and Professions Code. Respondent was suspended for one year, stayed, placed on probation for three years with conditions, including a 30 day actual suspension.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities. Respondent's wife was diagnosed with breast cancer in February 2009. In August 2009, Respondent was diagnosed with the onset of kidney disease and his physician discovered a number of tumors and cysts on both kidneys. It was not until October 2009, that Respondent learned that the tumors were not malignant.
- (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 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 90 days .
- 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 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: Respondent attended Ethics School on October 8, 2009.
- (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:
 - Substance Abuse Conditions
 - Law Office Management Conditions
 - Medical Conditions
 - 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 321(a)(1) & (c), Rules of Procedure.**

No MPRE recommended. Reason: Respondent took and passed the MPRE on August 7, 2009.

(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 TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: CLAY E. PRESLEY

CASE NUMBER(S): 09-O-18479

FACTS AND CONCLUSIONS OF LAW

Clay E. Presley ("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.

I. Facts

1. On June 13, 2008, Respondent entered into a stipulation regarding facts, conclusions of law, and disposition in State Bar court case no. 06-O-11624. The stipulation included the requirement that Respondent comply with certain conditions of probation.
2. On October 15, 2008, the California Supreme Court filed its order in case no. S165959 approving the stipulation reached in State Bar court case no. 06-O-11624. The Court ordered that Respondent be suspended from the practice of law for one year, that execution of the suspension be stayed, and that Respondent be placed on probation for three years with conditions, including that he be actually suspended for thirty days ("the Order"). On or about October 15, 2008, the California Supreme Court clerk served a copy of the Order on Respondent by mail. Respondent received a copy of the Order. The Order was effective November 14, 2008.
3. As a condition of the probation recommended by the Hearing Department and ordered by the Supreme Court, the Court ordered Respondent to comply with numerous conditions of Probation, including the following financial conditions:
 - a. Respondent is to pay restitution to complaining witness Marcos Alvarez in the total amount of \$2800 plus interest of 10% per annum accruing from September 7, 2004;
 - b. Respondent is to pay restitution by making minimum monthly payments of \$280;
 - c. Respondent is to submit satisfactory proof of payment of restitution to the Office of Probation ("Probation") on a quarterly basis;
 - d. if the Client Security Fund ("CSF") has reimbursed the complaining witness on Respondent's behalf, Respondent is to pay restitution to CSF, plus applicable interest and costs.
4. Respondent did not submit proof of payment of restitution to Probation on a quarterly basis. Specifically, Respondent did not submit proof of payment on the due dates of January 10, 2009, April 10, 2009, July 10, 2009 and October 10, 2009.
5. On November 24, 2008, CSF reimbursed Marcos Alvarez in the amount of \$2800 and assessed \$147 in processing costs against Respondent.

6. On April 24, 2009, Probation contacted Respondent regarding his failure to pay restitution or submit proof of payment.
7. On May 1, 2009, Probation was advised that Respondent authorized a transfer to CSF of a portion of funds overpaid by Respondent to Membership Billing. Accordingly, \$1620.50 was transferred to CSF. Although this payment was late, it was applied by Probation to the restitution owed by Respondent as follows:
 - a. November 2008: \$280.00
 - b. December 2008: \$280.00
 - c. January 2009: \$280.00
 - d. February 2009: \$280.00
 - e. March 2009: \$280.00
 - f. April 2009: \$280.00
8. After authorizing the above described transfer of funds, Respondent did not make restitution payments for the remainder of 2009 or submit proof of payment of restitution to the Office of Probation.
9. On October 29, 2009, Probation sent Respondent a letter advising him that he was not in compliance with the terms of his probation due to his failure to pay restitution. The Probation letter outlined the basis for Probation's determination that Respondent was non compliant.
10. Respondent replied by letter on November 13, 2009, stating that: (1) he is in compliance with the terms of his probation because CSF paid the complaining witness and he was advised by membership records that the restitution amount is being billed on his annual bar statement; (2) he disputes the interest calculation because the restitution amount was paid by CSF; (3) the terms of the Stipulation require him to pay \$2800 plus 10% interest to CSF by October 14, 2011, if CSF paid the complaining witness. Since CSF paid the complaining witness in November 2008, Respondent believed his sole obligation was to reimburse CSF by October 14, 2011.
11. On November 24, 2009, Probation sent Respondent a reply letter, again explaining why Respondent was not in compliance and advising Respondent that his matter was being referred to the enforcement unit due to his non-compliance.
12. On or about December 18, 2009, Respondent was contacted by Deputy Trial Counsel Elina Kreditor regarding his non compliance with the terms of his Probation.
13. On or about January 29, 2010, Respondent sent a check to complaining witness, Marcos Alvarez in the amount of 1177.53. Said check comprised the outstanding interest owed to Mr. Alvarez.
14. On or about January 29, 2010, Respondent sent a check to CSF, in the amount of 1540.50. The check comprised CSF costs and the outstanding amount owed to CSF for its payment of restitution to Mr. Alvarez.

II. Conclusions of Law

By failing to timely submit monthly restitution payments and timely submit proof of payment of restitution, Respondent willfully failed to comply with all conditions attached to any disciplinary probation in violation of Business and Professions Code, section 6068(k).

PENDING PROCEEDINGS

The disclosure date referred to, on page 2, paragraph A(7), of the instant Stipulation, was September 17, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of September 17, 2010, the costs in this matter are \$1983.00. 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.

AUTHORITIES SUPPORTING DISCIPLINE

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 2.6(a) of Standards for Attorney Sanctions for Professional Misconduct (“Standard(s)”) provides that violations of section 6068 shall result in disbarment or suspension depending upon the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline. Pursuant to Standard 2.6(a), the appropriate level of discipline in this matter is in the range of suspension to disbarment.

Standard 1.7(a) provides that where a member has previously been found culpable of any misconduct, the degree of discipline imposed shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

Standard 1.7(b) provides that where a member is found culpable of misconduct and the member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

In *In re Silvertan* (2005) 36 Cal. 4th 81, 92, the California Supreme Court held that the Standards for Attorney Sanctions for Professional Misconduct are entitled to “great weight” and the Court will “not reject a recommendation arising from the Standards unless [it has] grave doubts as to the propriety of the

recommended discipline.” The Standards are not binding but “they promote the consistent and uniform application of disciplinary measures.” (Id.) The “presumptively appropriate level of discipline” for any misconduct is as set forth in the standards (See *Morgan v. State Bar* (1990) 51 Cal. 3d 598, 607).

It should be noted, however, that 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), but 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). The appropriate discipline is determined in light of all relevant facts, including mitigating and aggravating circumstances. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

Here, the nature of Respondent’s misconduct, as well as the mitigating evidence involved, justify a deviation from Standard 1.7(b).

Upon being contacted by the Office of Probation regarding his failure to pay restitution, Respondent corresponded with the Office of Probation and expressed his belief that, because CSF had paid the complaining witness in the matter, his duty was to pay CSF the outstanding amount and interest at the conclusion of his probationary term. Although the case was referred to the Enforcement Unit shortly after the above described correspondence, there was no significant delay in Respondent’s payment of the full outstanding restitution amount and interest to CSF upon being contacted by Deputy Trial Counsel Elina Kreditor.

Respondent also presented evidence that during the period of the misconduct, he was suffering from emotional and physical stress. Respondent’s wife was diagnosed with breast cancer in February 2009. In August 2009, Respondent was diagnosed with the onset of kidney disease and his physician discovered a number of tumors and cysts on both kidneys. It was not until October 2009, that Respondent learned that the tumors were not malignant.

Finally, Respondent cooperated with the State Bar by signing the instant Stipulation.

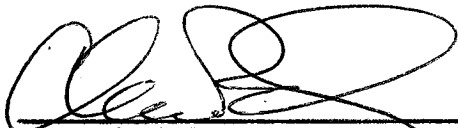


Given the nature of the misconduct in this matter and the mitigating factors involved, a 90 day actual suspension is appropriate in this matter.

(Do not write above this line.)

In the Matter of CLAY E. PRESLEY	Case number(s): 09-0-18479
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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>10-5-10</u> Date	 Respondent's Signature	<u>CLAY E. PRESLEY</u> Print Name
<u>10/12/10</u> Date	 Respondent's Counsel Signature	<u>SUSAN L. MARGOLIS</u> Print Name
<u>10/14/10</u> Date	 Deputy Trial Counsel's Signature	<u>ELINA KREDITOR</u> Print Name

(Do not write above this line.)

In the Matter Of CLAY E. PRESLEY	Case Number(s): 09-O-18479
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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.

- 1) On page 4, paragraph E.(1), the "x" from the box preceding the words, "If Respondent is actually suspended for two years or more. . . ." is deleted.
- 2) On page 5, paragraph E.(8), the "x" from the box preceding the words, "Within one (1) year of the effective date of the discipline herein, Respondent must provide. . . ." is deleted.

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.)**

Date

10/29/10


RICHARD A. HONN
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 3, 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:

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

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

by overnight mail at , California, addressed as follows:

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

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

Elina Kreditor, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 3, 2010.



Cristina Potter
Case Administrator
State Bar Court