ORIGINAL

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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION				
Counsel For The State Bar	Case Number(s):	For Court use only		
Larry DeSha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1336	09-O-18676-RAP	FILED		
Bar # 117910 Counsel For Respondent		JUN 02 2011 STATE BAR COURT CLERK'S OFFICE LOS ANGELES		
David A. Clare 444 W. Ocean Blvd.; Ste. 800 Long Beach, CA 90802 (562) 624-2837	PUBLIC	MATTER		
	Submitted to: Settlement Ju	dge		
Bar # 44971	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING			
In the Matter of:				
GARRY LAWRENCE JONES	ACTUAL SUSPENSION			
	PREVIOUS STIPULATION REJECTED			
Bar # 66344				
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 December 18, 1975.
- (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 12 pages, not including the order.

(Effective January 1, 2011)



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- (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: two 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 92-O-18074-DSW
  - (b) Date prior discipline effective September 28, 1994
  - (c) Rules of Professional Conduct/ State Bar Act violations: Rule 3-110(A); Business and Professions Code section 6068(0)(3)
  - (d) Degree of prior discipline Private Reproval, with public disclosure
  - (e) If Respondent has two or more incidents of prior discipline, use space provided below.

State Bar Court case # 05-O-04889

Date prior discipline effective: August 22, 2007

Rules of Professional Conduct/ State Bar Act violations: Rule 3-110(A); Business and Professions Code section 6103

Degree of prior discipline: Public Reproval

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- (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.

<sup>(</sup>Effective January 1, 2011)

- (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 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:
    - (b) The above-referenced suspension is stayed.

## (2) $\boxtimes$ **Probation**:

Respondent must be placed on probation for a period of one (1) year, 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 forty-five (45) 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 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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		Substance Abuse Conditions		Law Office Management Conditions
		Medical Conditions	$\boxtimes$	Financial Conditions
F. C	Other	Conditions Negotiated by the Part	ies:	
(1)		the Multistate Professional Responsibility E Conference of Bar Examiners, to the Office one year, whichever period is longer. <b>Fail</b>	Examinat e of Proba <b>ure to pa</b>	tion: Respondent must provide proof of passage of ion ("MPRE"), administered by the National ation during the period of actual suspension or within the MPRE results in actual suspension without b), California Rules of Court, and rule 5.162(A) &
		No MPRE recommended. Reason:	•	
(2)		<b>Rule 9.20, California Rules of Court:</b> Respondent must comply with the requirements of rule <b>9.20</b> , 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)		<b>Conditional Rule 9.20, California Rules of Court:</b> If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule <b>9.20</b> , 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 period of his/her interim suspension toward commencement of interim suspension:		al cases only]: Respondent will be credited for the ulated period of actual suspension. Date of
(5)		Other Conditions:		

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In the Matter of:	Case Number(s):	
GARRY LAWRENCE JONES	09-O-18676-RAP	

## **Financial Conditions**

#### a. Restitution

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

Principal Amount	Interest Accrues From
	Principal Amount

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

#### b. Installment Restitution Payments

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

Minimum Payment Amount	Payment Frequency
	Minimum Payment Amount

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.

#### c. Client Funds Certificate

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

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

#### d. Client Trust Accounting School

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

(Effective January 1, 2011)



## ATTACHMENT TO

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

## IN THE MATTER OF: GARRY LAWRENCE JONES CASE NO.: 09-O-18676-RAP

#### WAIVER OF VARIANCE:

The parties waive any variance between the Notice of Disciplinary Charges filed on February 16, 2011 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

## FACTS:

1. On March 28, 2005, Alfredo Zaldivar ("Zaldivar") hired Respondent for a personal injury case arising from a recent automobile accident. On that same day, Zaldivar signed a lien on the recovery for Hess Rehabilitation Center ("Hess"), who provided treatment for Zaldivar's injuries arising from the accident.

2. On May 23, 2005, Hess sent Respondent a written notice that Zaldivar's treatment was complete, and that Hess's bill was \$2,290. Respondent received the notice and the bill.

3. The personal injury case was settled in December 2005 for \$3,500.00, and Respondent deposited the settlement check into his client trust account ("CTA") on December 14, 2005. Respondent promptly paid himself \$1,233.33 for his fees and costs.

4. On February 28, 2006, Respondent paid \$1,100.00 to Zaldivar, which left \$1,166.67 in his CTA for payment of the lien held by Hess.

5. Respondent did not notify Hess of the settlement nor that he had received the settlement funds.

6. On December 30, 2008, January 7, 2009, and February 5, 2009, Hess sent written requests to Respondent for a status report on the case. Respondent did not reply to any of the three requests.

7. On February 18, 2009, Zaldivar received a bill from a collection agency for Hess, demanding a total of \$3,155.18, consisting of the principal of \$2,290.00 and accrued interest of \$865.18. Zaldivar called Respondent that same day, and Respondent promised to resolve the lien.

8. On February 27, 2009, Respondent attempted to settle the lien for the \$1,166.67 still held in his CTA. The collection agency refused to settle for that amount, but Respondent sent them a check for that amount, which completed disbursement of the settlement funds.

9. The collection agency subsequently contacted Zalvidar and demanded \$2,018.51. On May 14, 2009, Zalvidar and the collection agency settled the lien for an additional \$1,211.06, which Zalvidar promptly paid.

10. Zalvidar did not directly demand reimbursement from Respondent, but complained to the State Bar. After a written inquiry from the State Bar, Respondent reimbursed Zalvidar for the \$1,211.06 on November 9, 2010.

## CONCLUSIONS OF LAW:

11. Respondent willfully violated rule 3-110(A) of the California Rules of Professional Conduct by his failure to resolve the medical lien promptly after his receipt of the settlement funds and after his knowledge that a collection agency was seeking payment of the medical lien. This was a reckless and repeated breach of his duties to provide competent legal services to both his client and the lienholder.

#### DISMISSALS:

The State Bar respectfully requests the Court to dismiss the following alleged violations in the furtherance of justice:

<u>Count</u>	<b>Alleged Violation</b>
Two	B&PC section 6068(m)
Three	Rule $4-100(B)(3)$
Four	B&PC section 6068(i)

#### **SUPPORTING AUTHORITY:**

## Standards

Standard 2.4(b) requires a reproval or suspension for willfully failing to perform services in an individual matter not demonstrating a pattern of misconduct, depending upon the extent of the misconduct and the degree of harm to the client.

## Case Law

In *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, attorney Riley was found culpable of failure to promptly resolve liens on eight cases. In addition to the eight violations of rule 3-110(A), there were three related violations of section 6068(a) of the Business and Professions Code for failure to comply with statutory medical liens, there was one count for charging an illegal fee, and there were three violations of rule 4-100(B)(4) for failure to pay the liens as instructed by the clients.

The Review Department found some slight mitigation by the passage of more than five years since the violations. There were aggravating factors of multiple acts of wrongdoing and substantial harm to the clients and the courts, arising from the necessity of lawsuits against Respondent and some of his clients. The Review Department determined that an actual suspension was required to "augment [Riley's] understanding of the importance of his duties" to lienholders, and recommended an actual suspension of 90 days, based upon standard 2.2(b) for the three violations of rule 4-100(B)(4). The Review Department found no reason to deviate from the standard, in view of the "sheer number of violations" and the substantial harm to eight clients.

Lesser discipline is appropriate here because Respondent is not culpable of a violation of any part of rule 4-100, he caused minor harm to only one client, and he made full restitution to the client without the necessity of a lawsuit.

## **PENDING PROCEEDINGS:**

The disclosure date referred to on page 2, paragraph A.(7), was May 11, 2011.

## COSTS:

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of May 10, 2011, the costs in this matter are \$3,269.00. 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:

Case number(s):

GARRY LAWRENCE JONES

09-O-18676-RAP

# 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.

May <b>Z3</b> , 2011	Jung from an	Garry Lawrence Jones
Date	Responded & Signature	Print Name
May 23, 2011	In a Co	David A. Clare
Date	Respondent's Counsel Signature	Print Name
May <b>27</b> , 2011	Deputy Trial Dounsel's Signature	Larry DeSha
Date	Deputy Triagounsel's Signature	Print Name

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In the Matter of:	Case Number(s):
GARRY LAWRENCE JONES	09-O-18676-RAP

## 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.

On page 4, the "X" in the box at paragraph C.(13) is deleted, and the following language is added under the heading "Additional mitigating circumstances": "See mitigating circumstances described on page 11." On page 5 of the Stipulation, the "X" in the box at paragraph E.(1) is deleted. On page 6 of the Stipulation, the "X" in the box at paragraph F.(3) 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 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.)

5/31/11

Date

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Judge of the State Bar Court F. MILES

## **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 Los Angeles, on June 2, 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 Los Angeles, California, addressed as follows:

DAVID CLARE ESQ 444 W OCEAN BLVD STE 800 LONG BEACH CA 90802

 $\square$ 

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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:

LARRY DESHA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 2, 2011.

al arpenter Angela Carpenter

Case Administrator State Bar Court