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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION			kwiktag * 152 144 164 
Counsel For The State Bar Elizabeth Gonzalez Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 (213) 765-1342 Bar # 256839	Case Number(s): 11-C-13161-RAP	For Court use only FILED APR 16 2013  STATE BAR COURT CLERK'S OFFICE LOS ANGELES	
In Pro Per Respondent Jessany Emileigh Garrett 14724 Ventura Blvd. Suite 200 Sherman Oaks, CA 91403 (818) 217-2556 Bar # 241893	PUBLIC MATTER		
In the Matter of: JESSANY EMILEIGH GARRETT Bar # 241893 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input checked="" 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 March 16, 2006.
- (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.
- (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):
 - ☐ Costs are added to membership fee for calendar year following effective date of discipline.
 - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: two (2) 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
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See Attachment at page 8.
- (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.
- (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.

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(13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances

See Attachment at page 8.

D. Discipline:

(1) ☒ **Stayed Suspension:**

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

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent is placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

(1) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(2) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(3) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

(4) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

(5) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

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- (6) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (8) ☒ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9) ☐ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- ☐ No MPRE recommended. Reason: .
- (2) ☐ **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Jessany Emileigh Garrett

CASE NUMBER(S): 11-C-13161-RAP

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that she is culpable of engaging in misconduct warranting discipline.

Case No. 11-C-13161 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.
2. On August 21, 2012, Respondent was convicted of a misdemeanor violation of Penal Code section 422 [Criminal Threats].
3. On November 14, 2012, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense(s) for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.
4. The Review Department placed Respondent on interim suspension for 124 days from July 22, 2012 to November 14, 2012.

FACTS:

5. On October 5, 2010, at approximately 9:30 p.m., Jose Lopez, working for a repossession company, was attempting to repossess Respondent's vehicle which was parked in her driveway. The vehicle's alarm was set off and Respondent ran outside to see what was going on. When Mr. Lopez did not identify himself, Respondent went to the vehicle and retrieved several items from inside, including a handgun, which was inside a soft case that resembled the shape of a gun.
6. During a heated exchange, and while holding the gun Respondent orally threatened Mr. Lopez which caused him to be in sustained fear for his safety.
7. Mr. Lopez called 911, and by the time the police arrived, Respondent had placed the gun back in the vehicle; where the police located it inside the case.

8. On February 1, 2011, the Los Angeles County District Attorney filed a Felony Complaint in case number PA069899 charging Respondent with two felony counts: a violation of Penal Code section 245(a)(2) [Assault with a Firearm] and Penal Code section 422 [Criminal Threats].

9. On July 28, 2011, Respondent entered into a conditional plea and pled no contest to Count 2, a felony violation of Penal Code section 422 [Criminal Threats]. The court stated that it would reduce the charge to a misdemeanor if Respondent suffered no new arrests and/or convictions in the interim and completed 45 hours of Cal Trans work by the time of sentencing on July 28, 2012.

10. On July 28, 2012, the court reduced Count 2 to a misdemeanor and Respondent pled no contest. Count 1 was dismissed by the court.

11. On August 21, 2012, the Los Angeles County District Attorney's Office added Count 3, a misdemeanor violation of Penal Code section 422 [Criminal Threats], to the felony complaint. The court allowed Respondent to withdraw her plea and Respondent pled no contest to Count 3, a misdemeanor violation of Penal Code section 422 [Criminal Threats] and the remaining counts were dismissed.

12. On August 21, 2012, the Court stayed imposition of sentence and placed Respondent on two (2) years summary probation.

CONCLUSIONS OF LAW:

13. The facts and circumstances surrounding the above-described violation did not involve moral turpitude but did involve other misconduct warranting discipline.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Harm: Jose Lopez was harmed by being placed sustained fear for his safety as a result of Respondent's oral threats. (Standard 1.2(e)(i).)

ADDITIONAL MITIGATING CIRCUMSTANCES.

Candor/Cooperation: Pre-trial Stipulation. In *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156, the court found that Respondent was entitled to mitigation for cooperating with the State Bar by entering into a fairly comprehensive pretrial stipulation of facts.

Although the stipulated facts were not difficult to prove, and Respondent did not admit culpability, the stipulation was relevant and assisted the State Bar's prosecution of the case. The court accorded Respondent limited mitigation under standard 1.2(e)(v). Respondent is entitled to limited mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial in case no. 11-C-13161, thereby saving the State Bar Court time and resources. (*Id.*; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993-94.)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a “process of fixing discipline” pursuant to a set of written principles to “better discharge the purposes of attorney discipline as announced by the Supreme Court.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.” (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Standard 3.4 is the applicable standard in cases such as this, where a respondent has been convicted of a crime that does not on its face or in the surrounding facts and circumstances involve moral turpitude. This standard state such misconduct “shall result in a sanction as prescribed under part B of these standards appropriate to the nature and extent of the misconduct found to have been committed by the member.”

In reference to part B of the standards, the most applicable standard is Standard 2.10. Standard 2.10 states that culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Although under the catch-all provision of Standard 2.10, it is difficult to affix a precise level of discipline, the purpose of Standard 1.3 – the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession – are well served by a stayed suspension. An appropriate level of discipline is one (1) year stayed suspension and two (2) years probation, together with the conditions described herein.

In *In re Hickey* (1990) 50 Cal. 3d 571, Hickey was convicted of one misdemeanor violation of Penal Code section 12025(b) [carrying a concealed weapon] arising from an incident at a nightclub during which he struck his wife in the head with a gun and later threatened her. The Court found Hickey’s conduct warranted discipline. After trial, the discipline adopted was three (3) years probation, three (3) years stayed suspension, and 30 days actual suspension.

In *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, the respondent was convicted of one felony violation of Penal Code section 245(a)(2) [assault with a firearm] arising out of an incident with another motorist which resulted in Respondent firing his weapon at the other

motorist's vehicle, and striking a rear passenger in the face. The Review Department found the facts and circumstances surrounding Respondent's criminal conviction did not involve moral turpitude but were misconduct warranting discipline. The matter was remanded for further proceedings regarding level of discipline.

On remand in *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, the hearing department ordered Respondent O (Burns) be privately reprovved because the circumstances surrounding the criminal activity were in support of self defense, involved extensive mitigating circumstances, absence of aggravating circumstances, and the length of the interim suspension. The decision of the hearing department was appealed. The review department recommended two (2) years stayed suspension and two (2) years probation. The review department found the circumstances of the conviction and the mitigation to be less compelling than the hearing department, concluding they did not outweigh the seriousness of the conduct and harm caused. But, the length of the interim suspension, over 10 months, led them to conclude no further actual suspension was necessary. The instant matter is distinguishable from *Burns* because there is no presence of actual injury.

In *In the Matter of Franscinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543, the Review Department found respondent's criminal conviction did involve moral turpitude. The facts were that respondent, a tenant in an office building, received a three-day eviction notice and 10 minutes after being served with the notice walked to the 1st floor reception area and threatened the property owner with a replica gun. Respondent pointed the gun and pulled the trigger. Afterwards, Respondent proceeded to another office near his office suite and pointed the gun at three office employees.

The Review Department found that where, in brandishing replica firearm so as to cause reasonable fear of harm, respondent did not act out of uncontrollable anger or other disabling disorder; had the time and opportunity to ponder his acts beforehand; repeated his outrageous conduct after additional time for reconsideration; put innocent bystanders in fear for their safety and well being; responded inappropriately to a dispute easily and routinely settled through normal legal processes; and did not act due to any abuse of alcohol, the circumstances surrounding respondent's criminal offenses involved moral turpitude. These same facts are not found in the instant matter. Here, there is no evidence of premeditation because Respondent acted out in the heat of the moment when she believed her car was being broken into.

The case was remanded to the hearing department for a hearing and decision recommending the degree of discipline to be imposed.

Even though Respondent's behavior does not rise to the level of moral turpitude, the facts and circumstances surrounding her criminal conviction are misconduct warranting discipline. Additionally, the length of the interim suspension, 4 months, leads to the conclusion that no further actual suspension is necessary. The appropriate level of discipline for Respondent in this matter is one (1) year stayed suspension and two (2) years probation.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was March 18, 2013.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 18, 2013, the prosecution costs in this matter are approximately \$2,343. 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.

EXCLUSION FROM MCLE CREDIT



Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: JESSANY EMILEIGH GARRETT SBN 241893	Case number(s): 11-C-13161-RAP
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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 Facts, Conclusions of Law, and Disposition.

<u>4/4/13</u> Date	<u></u> Respondent's Signature	<u>Jessany Emileigh Garrett</u> Print Name
<u>4-7-13</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Elizabeth Gonzalez</u> Print Name

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In the Matter of: JESSANY EMILEIGH GARRETT SBN 241893	Case Number(s): 11-C-13161-RAP
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STAYED SUSPENSION ORDER

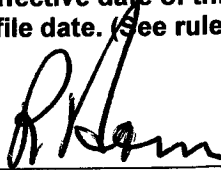
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ 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.

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

4-4-13



RICHARD A. HONN
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 Los Angeles, on April 16, 2013, 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:

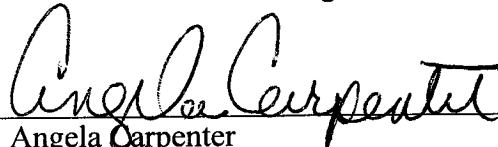
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JESSANY E. GARRETT
IDEAL LIVING MANAGEMENT, LLC
14724 VENTURA BLVD STE 200
SHERMAN OAKS, CA 91403

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

ELIZABETH GONZALEZ, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 16, 2013.



Angela Carpenter
Case Administrator
State Bar Court