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<b>State Bar Court of California Hearing Department Los Angeles REPROVAL</b>		
Counsel For The State Bar  Sue K. Hong Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015  Bar # 285852	Case Number(s): 11-C-15785	For Court use only  <div style="text-align: center;"> <b>FILED</b>   <b>AUG 21 2013</b>    <b>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</b> </div>
Counsel For Respondent  Mary X. Nguyen 1101 E. Garvey Street, Suite 206 Monterey Park, CA 91755  Bar # 204461	<b>PUBLIC MATTER</b>	
In the Matter of: <b>ELIEL FLORES</b>  Bar # 242324  A Member of the State Bar of California (Respondent)	Submitted to: <b>Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>PUBLIC REPROVAL</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted May 30, 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 9 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."



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- (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 (public reproof).
  - Case ineligible for costs (private reproof).
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: Costs to be paid in equal amounts prior to February 1 for the three billing cycles following the effective date of the Hearing Department's 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.
- (9) The parties understand that:
- (a)  A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
  - (b)  A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
  - (c)  A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

**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

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- (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.
- (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

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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. See attachment at page 8.
- (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:**

See Attachment at page 8.

**D. Discipline:**

- (1)  **Private reproof (check applicable conditions, if any, below)**
- (a)  Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b)  Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2)  **Public reproof (Check applicable conditions, if any, below)**

**E. Conditions Attached to Reproval:**

- (1)  Respondent must comply with the conditions attached to the reproval for a period of one year.
- (2)  During the condition period attached to the reproval, 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 condition period attached to the reproval. Under penalty of perjury,

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Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reprobation during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reprobation.
- (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)  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 of the effective date of the reprobation.

No MPRE recommended. Reason: The protection of the public and the interests of the Respondent do not require passage of the MPRE in this case. See In the Matter of Respondent G (Review Dept. 1992), 2 Cal. State Bar Ct. Rptr. 181.

(11)  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:**

Additional Reprobation Conditions:

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Attachment language (if any):

Respondent recognizes that a repeat conviction for DUI suggests an alcohol and/or drug problem that needs to be addressed before it affects Respondent's legal practice. Respondent agrees to take the steps necessary to control the use of alcohol and/or drugs such that it will not affect Respondent's law practice in the future. Respondent's agreement to participate in an abstinence-based self-help group (as defined herein), as a condition of discipline, is part of Respondent's efforts to address such concerns.

As a condition of reprobation, and during the period of reprobation, Respondent must attend a minimum of two (2) meetings per month of any abstinence-based self-help group of Respondent's choosing, including without limitation Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T., S.O.S., etc. Other self-help maintenance programs are acceptable if they include a subculture to support recovery, including abstinence-based group meetings. (See *O'Conner v. Calif.* (C.D. Calif. 1994) 855 F. Supp. 303 [no First Amendment violation where probationer given choice between AA and secular program.] ) Respondent is encouraged, but not required, to obtain a "sponsor" during the term of participation in these meetings.

The program called "Moderation Management" is not acceptable because it is not abstinence-based and allows the participant to continue consuming alcohol.

Respondent must contact the Office of Probation and obtain written approval for the program Respondent has selected prior to attending the first self-help group meeting. If Respondent wants to change groups, Respondent must first obtain the Office of Probation's written approval prior to attending a meeting with the new self-help group.

Respondent must provide to the Office of Probation satisfactory proof of attendance of the meetings set forth herein with each Quarterly Report submitted to the Office of Probation. Respondent may not sign as the verifier of his or her own attendance.

Respondent is encouraged, but is not required, to participate in the Lawyers' Assistance Program, to abstain from alcohol and illegal drugs, and to undergo random urinalysis testing to complement abstinence.

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

**IN THE MATTER OF:                    ELIEL FLORES**

**CASE NUMBER:                        11-C-15785**

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which he was convicted involved other misconduct warranting discipline.

**Case No. 11-C-15785**

**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 15, 2011, Respondent was charged with violating California Vehicle Code section 23152 (A) [Driving Under the Influence of Alcohol], a misdemeanor, and section 23152 (B) [Driving Under the Influence of Alcohol with level 0.08 percent or more, by weight, of alcohol in his or her blood], a misdemeanor.
  
3.        On March 16, 2012 Respondent entered into a guilty plea of violation of VC 23152 (A) [DUI], and was sentenced to summary probation of 60 months and 96 hours in county jail , among other conditions.
  
4.        On May 3, 2013, 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.

**FACTS:**

5.        On July 28, 2011 at or about 12:35 am, a Los Angeles police officer observed Respondent making an unlawful U-turn. The officer stopped Respondent's vehicle and observed signs of intoxication when the officer engaged Respondent. Respondent did not perform the Standardized Field Sobriety Tests successfully and exhibited objective symptoms of intoxication, such as watery eyes and odor of alcohol. Respondent was arrested and taken into custody where he submitted two breath samples resulting in a 0.144 and 0.155 BAC. Ultimately, Respondent was charged with DUI with an enhancement for a prior, and DUI over 0.08.

6. On or about March 14, 2007, Respondent entered into a guilty plea for violation of California Vehicle Code section 23152 (A) [Driving Under the Influence of Alcohol], a misdemeanor, for a crime occurring on May 28, 2006. This conviction was a "prior offense" for purposes of the underlying offense herein.

#### CONCLUSIONS OF LAW:

7. The facts and circumstances surrounding Respondent's misdemeanor conviction for a violation of California Vehicle Code section 23152(A) did not involve moral turpitude but involved other misconduct warranting discipline.

#### ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

**Good Character (Std. 1.2(e)(vi)):** Respondent provided the Office of Chief Trial Counsel seven letters attesting to his good character from a wide range of references in the legal and general communities and who are aware of the full extent of the Respondent's misconduct.

**No Prior Discipline (Std. 1.2(e)(i)):** Respondent was admitted to practice in California in 2006 and has no prior record of discipline. However, since Respondent practiced for only five years prior to his professional misconduct in this matter, his lack of a prior record warrants little weight in mitigation. (See *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal State Bar Ct. Rptr. 332 [little mitigative credit accorded to attorney who practiced law for approximately five years at the time of the misconduct because of the short duration of respondent's practice of law prior to the misconduct].)

**Pre-trial Stipulation:** Respondent has cooperated with the State Bar in this matter, and has entered into a stipulated settlement of this matter obviating the need for a trial. Such cooperation is deserving of consideration. (*Silva-Vidor v. State Bar* (1989) 49 Cal. 3d 1071, 1079.)

#### 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 Silvertan* (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 states 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.

In this case, the gravity of the offense is reflected in Respondent's choice to drive his vehicle while under the influence of alcohol. The gravity of his offense is only compounded by Respondent's prior conviction for a violation of California Vehicle Code section 23152 (A) [Driving Under the Influence of Alcohol], on March 14, 2007.

Additional support for the level of discipline here comes from the California Supreme Court in *In re Kelley* (1990) 52 Cal.3d 487. The respondent in *Kelley* was convicted of a second DUI while on probation for a prior DUI. The Review Department reasoned that a DUI normally would not warrant State Bar discipline, however because *Kelley* convicted twice of the same offense and was on probation for the prior DUI, the facts and circumstances surrounding Respondent's criminal conviction did not involve moral turpitude but did amount to misconduct warranting discipline. The court recommended a public reproof.

Here, like the attorney in *Kelley*, Respondent has failed to conform his behavior to the standards set by the criminal law on two occasions over a period of five years resulting in two convictions for a violation of California Vehicle Code section 23152 (A) [Driving Under the Influence of Alcohol]. This pattern of behavior evidences a disregard for the law and indifference to the potential danger to the public. Respondent had been convicted of the first DUI five years prior to the time of the second offense. Thus, unlike the attorney in *Kelley*, Respondent was not on probation for his prior DUI when he was stopped for his second DUI. Nevertheless, the court in *Kelley* made it clear that a second DUI evidences a potential problem with alcohol that could "spill over" into an attorney's practice, and thus it was appropriate for State Bar action.

The facts and circumstances surrounding Respondent's criminal conviction do not involve moral turpitude but do involve other misconduct warranting discipline. Therefore, considering Standard 2.10 and the case law in *Kelley*, a public reproof is sufficient to protect

the public and serves the purposes of attorney discipline in this matter as set forth in standard 1.3.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 24, 2013, the prosecution costs in this matter are approximately \$2,392. 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**

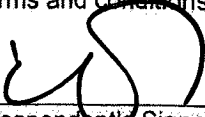
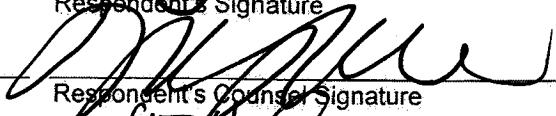
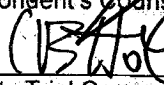
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of **State Bar Ethics School**. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: Eliel Flores	Case number(s): 11-C-15785
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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>8/13/13</u> Date	 Respondent's Signature	<u>Eliel Flores</u> Print Name
<u>8/15/13</u> Date	 Respondent's Counsel Signature	<u>Mary Nguyen</u> Print Name
<u>8/19/13</u> Date	 Deputy Trial Counsel's Signature	<u>Sue Hong</u> Print Name

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In the Matter of: ELIEL FLORES	Case Number(s): 11-C-15785
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### REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

*PAGE 1 - SECTION A. (3) - DELETE - " 9 PAGES "  
INSERT - " 11 PAGES "*

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.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

**Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.**

*08-21-2013*  
Date

  
RICHARD A. PLATEL  
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 August 21, 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:

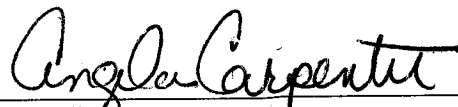
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MARY X. NGUYEN  
LAW OFFICES OF MARY X NGUYEN  
1101 E GARVEY AVE STE 206  
MONTEREY PARK, CA 91755

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

SUE HONG, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 21, 2013.



Angela Carpenter  
Case Administrator  
State Bar Court