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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION			PUBLIC MATTER	
Counsel For The State Bar Timothy G. Byer, DTC 1149 S. Hill St. Los Angeles, CA 90015 (213) 765-1325 Bar # 172472		Case Number(s): 11-H-10679, 11-O-10798		For Court use only <div style="font-size: 2em; font-weight: bold;">FILED</div> NOV 01 2011 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent Jason M. Kerlan P.O. Box 975 Fresno, CA 93714 (559) 259-5959 Bar # 183897		Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: Milton Kerlan, Jr. Bar # 39719 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 January 4, 1967.
- (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 14 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):
- ☒ 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: (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.

State Bar Court Case No. 94-O-13646 et al., effective July 8, 1998, Rules of Professional Conduct, rule 3-110(A), Business & Professions Code, section 6068(i), 1 year stayed suspension and 2 years probation with conditions including restitution; State Bar Court Case No. 01-O-04925, effective October 21, 2003, Business & Professions Code, sections 6068(k) and 6103, public reproof and 5 years probation with conditions including restitution; State Bar Court Case No. 04-O-14531, et al., effective July 6, 2008, Rules of Professional Conduct, rule 3-700(D)(2) and 1-110, Business & Professions Code, section 6106, 3 years stayed suspension and 5 years probation with conditions including 90 days 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. See Attachment, page 10, "Aggravating Circumstances"
- (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. See Attachment, page 10, "Mitigating Circumstances"
- (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. See Attachment, page 10, "Mitigating Circumstances"
- (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. See Attachment, pages 10-11, "Mitigating Circumstances"

- (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 3 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 4 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 2 years.
- i. ☒ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

☐ No Ethics School recommended. Reason: .

- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- ☐ No MPRE recommended. Reason:
- (2) ☒ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) ☒ **Other Conditions:** Respondent must, as part of his showing pursuant to standard 1.4(c)(ii), present testimony from a medical expert that Respondent's mental health issues have resolved sufficiently to allow him to return to the practice of law.

Respondent must also present proof of having paid restitution to Irene Castellanos or to the Client Security Fund in the principal amount of \$5,000, with interest of 10% per annum accruing from September 30, 1994 (as ordered by the State Bar Court on October 1, 2003, in State Bar Case No. 01-O-04925), either a) prior to seeking reinstatement pursuant to standard 1.4(c)(ii), or b) prior to or contemporaneously with his Final Probation Report, whichever is earlier.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Milton Kerlan, Jr.

CASE NUMBERS: 11-H-10679, 11-O-10798

FACTS AND CONCLUSIONS OF LAW.

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.

Case No. 11-H-10679

FACTS:

1. On October 1, 2003, the State Bar Court filed an Order approving the stipulation to public reproof entered into between Respondent and the Office of the Chief Trial Counsel of the State Bar of California in State Bar Case No. 01-O-04925 ("October 1 Order"). The October 1 Order directed Respondent to comply with the following reproof conditions for a period of five years, which was to commence upon the effective date of the October 1 Order;

a. that Respondent submit written quarterly reports ("Quarterly Reports") to the (then) Probation Unit of the Office of the Chief Trial Counsel on each January 10, April 10, July 10, and October 10 of the reproof period;

b. that Respondent submit a final report ("Final Report"), to be due no earlier than 20 days before the last day of the reproof period and no later than the last day of the period;

c. that Respondent make restitution to Kimberly Jackson or to the Client Security Fund on behalf of Kimberly Jackson in the principal amount of \$6,666.67 plus interest accruing from November 18, 1996, at the rate of 10% per annum, to be paid in full within 54 months from the effective date of the October 1 Order; and

d. that Respondent make restitution to Irene Castellanos or to the Client Security Fund on behalf of Irene Castellanos in the principal amount of \$5,000 plus interest accruing from September 30, 1994, at the rate of 10% per annum, to be paid in full within 54 months from the effective date of the October 1 Order.

2. On March 20, 2008, the State Bar Court filed an Order Pursuant to Telephonic Status Conference ("March 20 Order") in which Respondent's reprobation conditions were modified to:

a. extend the reprobation period for two years, ending on October 21, 2010; and
b. require Respondent to complete all restitution no later than 30 days prior to the termination of his reprobation period, and to provide satisfactory proof of completion with his Final Report.

3. The March 20 Order was mailed to Respondent, who received it.

4. On October 7, 2009, the State Bar Court filed a Minute Order ("Minute Order") in which the court modified Respondent's restitution requirements to require Respondent to pay \$50 per month to Irene Castellanos or to the Client Security Fund on her behalf, commencing on November 15, 2009 and continuing monthly thereafter, and to provide proof of payment to the Office of Probation quarterly commencing on January 10, 2010. The Minute Order was mailed to Respondent, who received it.

5. Respondent failed to make \$50 monthly restitution payments to Irene Castellanos or to the Client Security Fund on her behalf in November and December of 2009, and in February, March, April, May, and June of 2010.

6. Respondent failed to timely file his Quarterly Reports in July and October of 2009, and in January, April, and July of 2010, and failed to timely file his Final Report by the last day of the reprobation period (October 21, 2010).

7. Respondent failed to complete all restitution by September 21, 2010.

CONCLUSIONS OF LAW:

8. By not timely making \$50 monthly restitution payments to Irene Castellanos or to the Client Security Fund on her behalf, by not timely filing Quarterly Reports or his Final Report, and by not completing all restitution by September 21, 2010, Respondent failed to comply with all conditions attached to public or private reprovals or other discipline administered by the State Bar, in willful

violation of Rules of Professional Conduct, rule 1-110.

Case No. 11-O-10798

FACTS:

9. On June 6, 2008, the Supreme Court of California filed Order No. S162323 (State Bar Court Case Nos. 04-O-14531, 07-H-11827 (cons.)) ("June 6 Order"). The June 6 Order directed Respondent to comply with the conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed February 13, 2008 ("2008 Stipulation"). The June 6 Order was mailed to Respondent, who received it. The 2008 Stipulation included the following requirements:

- a. that Respondent be placed on probation for a period of 5 years, which was to commence upon the effective date of the June 6 Order;
- b. that Respondent submit written quarterly reports ("Quarterly Reports") to the (then) Probation Unit of the Office of the Chief Trial Counsel on each January 10, April 10, July 10, and October 10 of the period of probation;
- c. that Respondent be assigned a probation monitor, with whom Respondent was to promptly review the terms and conditions of probation to establish a manner and schedule of compliance, to whom Respondent was to furnish such reports as may be requested, and with whom Respondent was to cooperate fully; and
- d. that, with each Quarterly Report, Respondent was to furnish to the Office of Probation evidence that that he had been received monthly psychiatric treatments from Dr. Clark A. Feldman, M.D.

10. Paul R. Freeman was Respondent's assigned probation monitor. Mr. Freeman attempted to contact Respondent on several occasions in July 2008 by calling Respondent's answering service and leaving messages for Respondent requesting a return call. Respondent received all of Mr. Freeman's messages but returned none of them.

11. The Office of Probation sent Respondent a letter dated August 1, 2008, which Respondent received, directing Respondent to contact Mr. Freeman immediately. Respondent did not

initiate contact with Mr. Freeman in response to the letter.

12. Respondent failed to cooperate fully with his probation monitor by failing to return the probation monitor's numerous telephone messages in July 2008, and by failing to initiate contact with Mr. Freeman in response to the August 1, 2008 letter from the Office of Probation.

13. Respondent failed to timely file his Quarterly Reports in October 2009, and in January, April, and July of 2010.

14. Respondent failed to furnish the Office of Probation with proof of monthly psychiatric treatments with Dr. Feldman with his Quarterly Reports for July or October of 2009 or for January, April, July, or October of 2010, or for January 2011.

CONCLUSIONS OF LAW:

15. By not cooperating fully with his probation monitor, by not timely filing his Quarterly Reports, and by not furnishing the Office of Probation with proof of monthly psychiatric treatments with Dr. Feldman, Respondent failed to comply with all conditions attached to a disciplinary probation, in wilful violation of Business and Professions Code, section 6068(k).

AGGRAVATING CIRCUMSTANCES:

Multiple/Pattern of Misconduct: Respondent's multiple failures to comply with his probation conditions demonstrate a pattern of misconduct.

MITIGATING CIRCUMSTANCES:

No Harm: Respondent's failures to comply with probation conditions did not result in harm to any of his clients' matters.

Candor/Cooperation: Respondent agreed to settle this matter at a very early stage in the disciplinary proceedings. (Standards for Attorney Sanctions for Professional Misconduct, Standard 1.2(e)(v).)

Severe Financial Stress: Respondent's sole source of income during the period of this misconduct amounted to approximately \$700/mo. from Social Security; he has no savings; he receives public assistance in the form of food stamps. Respondent was unable to afford the psychiatric care

required by the Medical Conditions following the retirement of his physician, due to the difficulty of obtaining psychiatric care under Medicare.

AUTHORITIES SUPPORTING DISCIPLINE:

Standard 1.7(b) provides that "If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate."

Deviation from 1.7(a), as with any Standard, may be appropriate where its application would be manifestly unjust. *In re: Ronald Robert Silverton*, (2005) 36 Cal.4th 81. Under the instant circumstances, disbarment of Respondent would be manifestly unjust.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was August 15, 2011.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 15, 2011, the prosecution costs in this matter are \$3,689.00. 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:
Milton Kerlan, Jr.

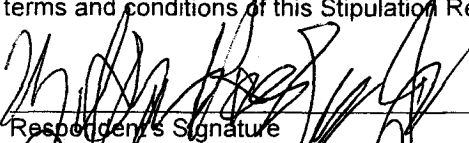
Case number(s):
11-H-10679, 11-O-10798

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.

10/20/11

Date



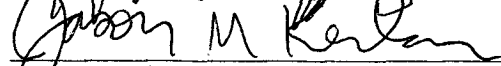
Respondent's Signature

Milton Kerlan, Jr.

Print Name

10/20/11

Date



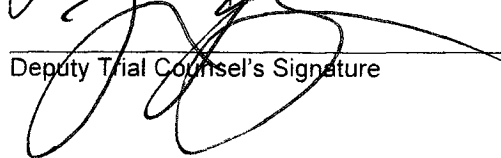
Respondent's Counsel Signature

Jason M. Kerlan

Print Name

10.21.11

Date



Deputy Trial Counsel's Signature

Timothy G. Byer

Print Name

(Do not write above this line.)

In the Matter of:
Milton Kerlan, Jr.

Case Number(s):
11-H-10679, 11-O-10798

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.

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

10-31-11



Judge of the State Bar Court
RICHARD A. HONN

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 November 1, 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:

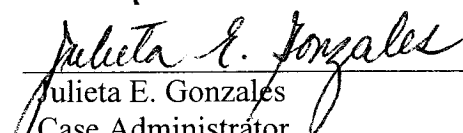
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JASON M KERLAN ESQ
PO BOX 975
FRESNO, CA 93714

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

Timothy G. Byer, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 1, 2011.



Julieta E. Gonzales
Case Administrator
State Bar Court