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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
<b>Counsel For The State Bar</b>  Erin McKeown Joyce Deputy Trial Counsel State Bar of California 1149 South Hill Street Los Angeles, CA 90015-2299 Telephone: (213) 765-1356 Facsimile: (213) 765-1319  Bar # 149946	<b>Case Number(s):</b> 11-O-11344 11-O-12106 11-O-18716  <b>PUBLIC MATTER</b>	<b>For Court use only</b>  <div style="text-align: center;"> <b>FILED</b>  <b>FEB 15 2012</b>  STATE BAR COURT  CLERK'S OFFICE  LOS ANGELES </div>
<b>Counsel For Respondent</b>  Kevin Patrick Gerry The Law Office of Kevin Gerry 711 N Soledad Street Santa Barbara, CA 93103 (805)899-2990  Bar # 129690	<b>Submitted to: Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
<b>In the Matter of:</b> <b>KIM DENNISE SCOVIS</b>  Bar # 182059  A Member of the State Bar of California (Respondent)	<b>ACTUAL SUSPENSION</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 June 3, 1996.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.

- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 11 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - ☐ Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: commencing in 2013 to be paid in equal installments over two 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 04-O-15322 and 05-O-934
  - (b) ☒ Date prior discipline effective November 5, 2009
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct 3-700 and 4-100, Business and Professions Code sections 6068(m) and 6068(i)
  - (d) ☒ Degree of prior discipline ninety day actual suspension
  - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (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.

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- (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. Throughout this proceeding, Respondent cooperated fully with the State Bar, answered the questions that were posed by the State Bar, and entered into this comprehensive stipulation acknowledging her misconduct and settling these matters at the earliest opportunity.
- (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.
- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**D. Discipline:**

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of two (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:
- (b) ☒ The above-referenced suspension is stayed.

- (2) ☒ **Probation:**

Respondent must be placed on probation for a period of three (3) 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 sixty (60) 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:
  - ☐ Substance Abuse Conditions ☐ Law Office Management Conditions
  - ☐ Medical Conditions ☐ Financial Conditions

**F. Other Conditions Negotiated by the Parties:**

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 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:** \_\_\_\_\_

The Attachment to the Stipulation re Facts, Conclusions of Law and Disposition comprises pages 7 to 10.

## **ATTACHMENT TO**

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

#### **In the Matter of Kim Dennise Scovis**

**Case Nos. 11-O-11344, 11-O-12106 and 11-O-18716**

#### **PENDING PROCEEDINGS:**

The disclosure date referred to on page two, paragraph A.(7), was January 26, 2012.

Respondent admits that the following facts are true and that she is culpable of violations of the specified Rule of Professional Conduct.

**Case Nos. 11-O-11344, 11-O-12106 and 11-O-18716**

#### **FACTS**

1. In late summer 2009, Respondent and her mother, Jenny Scovis, who is also an attorney, met Michael McDevitt, who operated a professional office in the same building as Respondent did.
2. McDevitt represented to Respondent and her mother that he was an experienced mortgage professional. McDevitt was the owner of Fidelity Financial, a company he represented was successful in loan modifications and other related real estate matters.
3. In September 2009, Jenny Scovis agreed to form Scovis Law Group and hired McDevitt as the office manager and human resources director of the firm. Jenny Scovis opened the office of Scovis Law Group next door to McDevitt's Fidelity Financial office. Respondent was not involved in the operations of Scovis Law Group.
4. On September 10, 2009, Jenny Scovis opened a bank account at Wells Fargo Bank and made McDevitt an authorized signatory on the account. The account was intended to be the operating account for Scovis Law Group. Respondent authorized McDevitt to use her tax identification number for the Scovis Law Group operating account.
5. Respondent failed to properly supervise McDevitt in connection with the opening of the Scovis Law Group account and the maintenance of the Scovis Law Group account. In the exercise of proper supervision, Respondent would have known that McDevitt opened the Scovis Law Group account using her tax identification number, using the address of Fidelity Financial, instead of the address of Scovis Law Group.
6. Because Respondent failed to exercise proper supervision of McDevitt in connection with the opening of the Scovis Law Group account, she was unaware that McDevitt directed the statements to the Fidelity Financial office. Respondent did not review the statements of the Scovis Law Group account. When she asked McDevitt to review the statements of the account, he failed to provide the statements to her.

7. Respondent failed to properly supervise McDevitt in the operations of the Scovis Law Group account, after she authorized McDevitt to open the account using her tax identification number.

8. When Jenny Scovis was unable to obtain sufficient information from McDevitt concerning the operations of Scovis Law Group, she terminated her relationship with McDevitt and ceased the operations of Scovis Law Group. Jenny Scovis simultaneously closed the Scovis Law Group at the time she terminated McDevitt.

9. While he was employed by Scovis Law Group, and after he was terminated by Jenny Scovis, McDevitt accepted clients on behalf of the office which he failed to disclose to Jenny Scovis or to Respondent. He deposited the funds collected from those clients into the Scovis Law Group operating account, which used Respondent's tax identification number.

10. After he was terminated by Jenny Scovis, McDevitt continued to operate Scovis Law Group for a few months without authority.

11. When she terminated McDevitt and closed Scovis Law Group, Jenny Scovis notified Wells Fargo and all of the clients of which she was aware of the closing of the Scovis Law Group. She specifically directed Wells Fargo to close the Scovis Law Group account. Wells Fargo did not immediately close the account, and continued to allow McDevitt to access the Scovis Law Group account.

12. When they discovered McDevitt was still operating Scovis Law Group without authority, Jenny Scovis and Respondent notified the criminal authorities of McDevitt's continued unauthorized operation of Scovis Law Group. Only after he was contacted by the criminal authorities did McDevitt cease his unauthorized operation of Scovis Law Group.

13. Because she failed to properly supervise McDevitt and the operations of Scovis Law Group, both Respondent and Jenny Scovis failed to uncover that McDevitt accepted clients without their knowledge and consent on behalf of Scovis Law Group.

14. On June 15, 2010, McDevitt accepted James and Sandra Gianforte as clients of Scovis Law Group and took fees from the clients without Respondent's knowledge or consent. Respondent did not receive any fees from the Gianforte. McDevitt took the fees paid by the Gianfortes for his own use.

15. On August 12, 2010, McDevitt accepted Wendy Capps as a client of Scovis Law Group and took fees from the client without Respondent's knowledge or consent. Respondent did not receive any fees from Capps. McDevitt took the fees paid by Capps for his own use.

16. On January 8, 2010, McDevitt accepted Troy and DeeDee Diatte as clients of Scovis Law Group and took fees from the clients without Respondent's knowledge or consent. Respondent did not receive any fees from the Diattes. McDevitt took the fees paid by the Diattes for his own use.



## CONCLUSIONS OF LAW

By failing to properly supervise McDevitt and the operations of Scovis Law Group, after authorizing McDevitt to use her tax identification number to open the Scovis Law Group account, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in wilful violation of Rule of Professional Conduct 3-110(A).

## DISMISSALS

The State Bar dismisses Count One, Count Two and Count Three of the Notice of Disciplinary Charges in the interests of justice.

## AUTHORITIES SUPPORTING DISCIPLINE

### STANDARDS FOR ATTORNEY SANCTIONS

To determine the appropriate level of discipline, the standards provide guidance. *Drociak v. State Bar* (1991) 52 Cal.3d 1085; *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119. A disciplinary recommendation must be consistent with the discipline in similar proceedings. See *Snyder v. State Bar* (1990) 49 Cal.3d 1302. Also, the recommended discipline must rest upon a balanced consideration of relevant factors. *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119.

Pursuant to Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct 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.

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Pursuant to Standard 1.5 of the Standards for Attorney Sanctions for Professional Misconduct:

Reasonable duties or conditions fairly related to the acts of professional misconduct and surrounding circumstances found or acknowledged by the member may be added to a recommendation or suspension or; pursuant to rule 9.19, California Rules of Court, to a reproof. Said duties may include, but are not limited to, any of the following:

1.5(b): a requirement that the member take and pass an examination in professional responsibility;

1.5(d): a requirement that the member undertake educational or rehabilitative work at his or her own expense regarding one or more fields of substantive law or law office management;

1.5(f): any other duty or condition consistent with the purposes of imposing a sanction for professional misconduct as set forth in standard 1.3.

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Pursuant to Standard 2.4(b) of the Standards for Attorney Sanctions for Professional Misconduct:

Culpability of a member of a violation of rule 3-110(A) of the Rules of Professional Conduct shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

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Respondent failed to perform with competence by authorizing McDevitt to open the Scovis Law Group operating account using her tax identification number and then failing to properly supervise Scovis Law Group and McDevitt's use of the Scovis Law Group account in violation of Rule of Professional Conduct 3-110(A).

Respondent has one instance of prior discipline, which is considered aggravating under Standard 1.7(a). However, the misconduct in the prior matter is significantly more serious than in these matters. The stipulated discipline of an actual suspension of sixty (60) days, with conditions, and the lengthy probation period are sufficient to protect the public and the profession in these matters.

#### **FURTHER AGREEMENTS OF THE PARTIES**

The factual statements contained in this Stipulation constitute admissions of fact and may not be withdrawn by either party, except with court approval.

#### **COSTS**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed her that as of January 26, 2012, the estimated costs in this matter are \$5,053. 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:  
Kim D. Scovis

Case number(s):  
11-O-11344, 11-O-12106, 11-O-18716

### 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.

1-26-12

Date

Respondent's Signature

Kim D. Scovis

Print Name

1-26-12

Date

Respondent's Counsel Signature

Kevin P. Gerry

Print Name

1-26-12

Date

Deputy Trial Counsel's Signature

Erin McKeown Joyce

Print Name

(Do not write above this line.)

In the Matter of:  
Kim Dennise Scovis

Case Number(s):  
11-O-11344, 11-O-12106, 11-O-18716

### 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

2-15-12

Judge of the State Bar Court

RICHARD A. HUNN

## CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of <select city>, on February 15, 2012, 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:  
  
KEVIN P. GERRY  
711 N SOLEDAD ST  
SANTA BARBARA, CA 93103
- ☐ 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:

Erin M. Joyce, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 15, 2012.

  
Cristina Potter  
Case Administrator  
State Bar Court