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<b>State Bar Court of California Hearing Department San Francisco STAYED SUSPENSION</b>		
<b>Counsel For The State Bar</b>  Susan I. Kagan Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2037  Bar # 214209	<b>Case Number(s):</b> 11-O-12587 [11-O-12770]	<b>For Court use only</b>  <b>PUBLIC MATTER</b>  <b>FILED</b> <i>ADS</i>  OCT 12 2011  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<b>Counsel For Respondent</b>  Mark T. Gallagher, Esq. Cable Gallagher 101 Parkshore Dr Ste 100 Folsom, CA 95630 (916) 608-7995  Bar # 180514	<b>Submitted to: Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter of:</b> TIMOTHY J. O'CONNOR  Bar # 151110  A Member of the State Bar of California (Respondent)		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted December 12, 1990.
- (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 13 pages, not including the order.



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- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - 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: (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 page 9.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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. See page 9.
- (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. See page 9.
- (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. See page 9.
- (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**

**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 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.)

**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 checked="" 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 language (if any):

## FACTS AND CONCLUSIONS OF LAW

Case No. 11-O-12587

### Facts

1. At all relevant times herein, "US Loan Auditors, LLC", "US Loan Auditors, Inc." and "My US Legal Services" (hereinafter "My US Legal") were companies owned, in part, by non-attorneys. At all relevant times herein, homeowners hired My US Legal to file predatory lender lawsuits and paid advanced attorney's fees in monthly installments to My US Legal. Thereafter, My US Legal hired outside attorneys ("contract attorneys") to handle the predatory lender lawsuits. My US Legal paid the contract attorney \$250.00 per month per client as attorney's fees. The \$250.00 was paid from the monthly installments paid to My US Legal by the homeowners as advanced attorney's fees.
2. From February through June 2010, My US. Legal hired respondent to handle predatory lender lawsuits on behalf of its clients. From February through June 2010, My US Legal paid respondent a total of \$67,477.50 as fees from a portion of the monthly installments paid to My US Legal by the homeowners as advanced attorney's fees. The \$66,477.50 represented an impermissible fee split with a non-attorney.
3. Prior to January 2010, Jesus Avila ("Avila") hired My US Legal to file a predatory lender lawsuit on his behalf. In February 2010, My US Legal hired respondent to handle the Avila matter. At all relevant times herein, Avila paid My US Legal advanced attorney's fees in monthly installments. My US Legal forwarded \$1,250.00 (paid in installments of \$250.00 per month) to respondent for the Avila matter. The \$250.00 represented attorney's fees and was paid from a portion of the advanced attorney's fees paid by Avila to My US Legal. The \$1,250.00 represented an impermissible fee split with a non-attorney.
4. Thereafter, My US Legal filed a complaint on behalf of Avila. The defendants filed a demurrer and My US Legal filed an amended complaint. Thereafter, respondent failed to perform any further work in the Avila matter. Respondent did not earn the \$1,250.00 paid as advanced fees.

### Conclusions of Law

1. By splitting the legal fees with My US Legal, respondent shared a legal fee with a person who is not a lawyer in willful violation of rule 1-320(A) of the Rules of Professional Conduct.
2. By failing to perform any work of value in the Avila matter, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.
3. By failing to refund \$1,250.00 in unearned fees to Avila, respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Facts

1. At all relevant times herein, "US Loan Auditors, LLC", "US Loan Auditors, Inc." and "My US Legal Services" (hereinafter "My US Legal") were companies owned, in part, by non-attorneys. At all relevant times herein, homeowners hired My US Legal to file predatory lender lawsuits and paid advanced attorney's fees in monthly installments to My US Legal. Thereafter, My US Legal hired outside attorneys ("contract attorneys") to handle the predatory lender lawsuits. My US Legal paid the contract attorney \$250.00 per month per client as attorney's fees. The \$250.00 was paid from the monthly installments paid to My US Legal by the homeowners as advanced attorney's fees.
2. Prior to January 2010, Darlin Ritchie ("Ritchie") hired My US Legal to file a predatory lender lawsuit on his behalf. In February 2010, My US Legal hired respondent to handle the Ritchie matter. At all relevant times herein, Ritchie paid My US Legal advanced attorney's fees in monthly installments. My US Legal forwarded \$1,000.00 (paid in installments of \$250.00 per month) to respondent for the Ritchie matter. The \$250.00 represented attorney's fees and was paid from a portion of the advanced attorney's fees paid by Ritchie to My US Legal. The \$1,000.00 represented an impermissible fee split with a non-attorney.
3. My US Legal then filed a complaint on behalf of Ritchie. Thereafter, respondent failed to perform any work in the Ritchie matter. Respondent did not earn the \$1,000.00 paid as advanced fees.

Conclusions of Law

1. By splitting the legal fees with My US Legal, respondent shared a legal fee with a person who is not a lawyer in willful violation of rule 1-320(A) of the Rules of Professional Conduct.
2. By failing to perform any work in the Ritchie matter, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.
3. By failing to refund \$1,000.00 in unearned fees to Ritchie, respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

PENDING PROCEEDINGS

The disclosure date referred to, on page 2, paragraph A(7), was September 12, 2011.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the State Bar has informed respondent that as of September 12, 2011, the estimated prosecution costs in this matter are approximately \$3,689.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should

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relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

#### FACTS SUPPORTING AGGRAVATING AND MITIGATING CIRCUMSTANCES

##### AGGRAVATING CIRCUMSTANCES

Standard 1.2(b)(iv). Respondent's misconduct caused significant harm to his clients.

##### MITIGATING CIRCUMSTANCES

Standard 1.2(e)(i). Respondent has been practicing law since 1990, and has no prior record of discipline.

Standard 1.2(e)(v). Respondent displayed spontaneous candor and cooperation to the State Bar during the disciplinary proceedings.

Standard 1.2(e)(vii). Respondent displayed remorse for his misconduct.

##### SUPPORTING AUTHORITY

Standard 2.4(b) requires reproof or suspension for a respondent who has wilfully failed to perform services in which he was retained.

Standard 2.10 requires that a violation of any provision of the Rules of Professional Conduct not specified in the standards (e.g., rules 1-320(A) and 3-700(D)(2)) shall result in reproof or suspension according to the gravity of the offense or harm, if any, to the victim, with due regard to the purpose of imposing discipline set forth in standard 1.3.

Generally, fee splitting with a non-attorney results in a period of actual suspension. (See, e.g., *In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615; *In re Arnoff* (1978) 22 Cal.3d 125; *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411; *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635; *In the Matter of Nelson* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 178.) However, based on the length of respondent's discipline-free practice and the fact that he is making restitution to the victims of his misconduct, a stayed suspension is the appropriate level of discipline in this matter.

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In the Matter of: TIMOTHY J. O'CONNOR	Case Number(s): 11-O-12587 [11-O-12770]
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### Financial Conditions

#### a. Restitution

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

Payee	Principal Amount	Interest Accrues From
Jesus Avila	\$1,250.00	N/A
Darlin Ritchie	\$1,000.00	N/A
Susan K. Smith, Trustee for Estate of My US Legal Services, Inc., U.S. Bankruptcy Court, Eastern District, Sacramento Division, Case No. 10-51750	\$65,227.50	N/A

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than one (1) year from the effective date of discipline.

#### b. Installment Restitution Payments

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

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
Susan K. Smith, Trustee for Estate of My US Legal Services, Inc., U.S. Bankruptcy Court, Eastern District, Sacramento Division, Case No. 10-51750	\$2,000.00	Monthly

- 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.

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**c. Client Funds Certificate**

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

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b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
  1. the name of such client;
  2. the date, amount and source of all funds received on behalf of such client;
  3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
  4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
  1. the name of such account;
  2. the date, amount and client affected by each debit and credit; and,
  3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

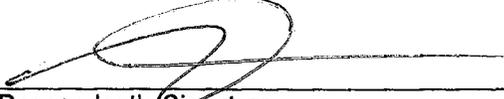
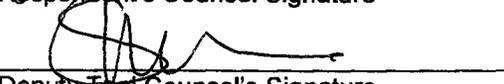
- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

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In the Matter of: TIMOTHY J. O'CONNOR	Case number(s): 11-O-12587 [11-O-12770]
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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>9-11</u> Date	 Respondent's Signature	<u>Timothy J. O'Connor</u> Print Name
<u>9-28-2011</u> Date	 Respondent's Counsel Signature	<u>Mark T. Gallagher, Esq.</u> Print Name
<u>10/3/11</u> Date	 Deputy Trial Counsel's Signature	<u>Susan I. Kagan</u> Print Name

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In the Matter of:  
TIMOTHY J. O'CONNOR

Case Number(s):  
11-O-12587 [11-O-12770]

### STAYED SUSPENSION ORDER

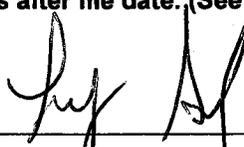
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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

Oct 12, 2011

  
Judge of the State Bar Court

**LUCY ARMENDARIZ**

**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 San Francisco, on October 12, 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:

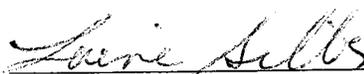
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

MARK T. GALLAGHER  
CABLE GALLAGHER  
101 PARKSHORE DR STE 100  
FOLSOM, CA 95630

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

SUSAN I. KAGAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 12, 2011.



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Laine Silber  
Case Administrator  
State Bar Court