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<b>State Bar Court of California Hearing Department San Francisco DISBARMENT</b>		
<b>Counsel For The State Bar</b>  Robin Brune, Senior Trial Counsel 180 Howard Street San Francisco, CA 94105  Bar # 149481	<b>Case Number(s):</b> 11-O-13019;11-O-17366;11-O-17584; 12-O-11909	<b>For Court use only</b>  <b>PUBLIC MATTER</b>  <b>FILED</b> <i>VB</i>  APR 16 2012  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<b>Counsel For Respondent</b>  Keith Brooks Attorney at Law 1344 Lincoln Street Berkeley, CA 94702-1434  Bar # 103870	<b>Submitted to: Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT  <b>DISBARMENT</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter of:</b> Brian Ching  Bar # 79456  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 April 17, 1978.
- (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 resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of ( 18 ) 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 to be awarded to the State Bar.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:  
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

**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**
- (a)  State Bar Court case # of prior case 10-O-01662;10-O-08024;11-O-11606
  - (b)  Date prior discipline effective 10/25/2011
  - (c)  Rules of Professional Conduct/ State Bar Act violations: B&P Code 6106, RPC4-100(A)&(B)(1)&(4); B&P 6103: RPC 3-110(A);RPC 3-110(A); B&P 6068(m).
  - (d)  Degree of prior discipline three years of suspension, stayed, five years of probation, one year of 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. Respondent's employees were dishonest with the clients.
- (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. Three clients had their matters settled without their consent and were deprived of their settlement funds, aggregate amount in excess of \$30,000.

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- (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. Three client matters are involved.
- (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. Respondent has been candid in reaching a stipulation in this matter.
- (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. Respondent's son passed away unexpectedly in November, 2010 at the age of 21. Respondent's son suffered from a mental illness and was involved in the juvenile criminal justice system from 2005 to his death. Respondent was affected by his responsibilities towards his son. Respondent also experienced a divorce.

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**D. Discipline: Disbarment.**

**E. Additional Requirements:**

- (1) **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.
- (2)  **Restitution:** Respondent must make restitution to see below in the amount of \$ see below plus 10 percent interest per year from see below. If the Client Security Fund has reimbursed the named clients for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than 365 days from the effective date of the Supreme Court order in this case.
- (3)  **Other:** Additional information on restitution:

Respondent must make restitution as follows:

Payee/Principal Amount/Interest accrues from:

Bernadino Delos Santos/\$5,000/September 11, 2009

Elizabeth Delos Santos/\$6,500/October 7, 2009

Jeane Thomas/\$6,000/April 4, 2008

Carmelo Sanchez/\$13,482.70/March 15, 2008

Gene Galvez/\$17,493 with interest accruing from January 1, 2009; and \$1,500 with interest accruing from May 17, 2008

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

IN THE MATTER OF:                      Brian Ching

CASE NUMBER(S):                      11-O-13109; 11-O-17366; 11-O-17584; 12-O-11909

**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-O-13109 (Complainant: Delos Santos)

I.        **FACTS:**

1.        On December 18, 2008, Bernardino M. Delos Santos, Jr. and Elizabeth U. Delos Santos hired respondent to represent them in a personal injury matter arising from an automobile accident. All the Santos dealings were with respondent's office manager, Lizzette Reyes. The Santos's did not receive a written fee agreement.

2.        In or about September 2009, respondent settled, or allowed somebody in respondent's office to settle, Mr. Santos personal injury claim for \$5,000 without Mr. Santos' knowledge, consent, or authorization. On September 2, 2009, respondent signed, or allowed somebody in respondent's office to sign, Mr. Santos name to the releases and returned them to the California State Automobile Association ("AAA"), the other driver's insurance company. On September 11, 2009, respondent received from AAA a check for \$5,000 issued to Mr. Santos and respondent's law offices as full and final settlement of Mr. Santos' claims. On that same date, respondent signed, or allowed somebody in respondent's office to sign, the check to Mr. Santos for \$5,000 without Mr. Santos' consent and knowledge and authorization to sign the check. On or about September 11, 2009, respondent, or someone on behalf of the respondent, deposited the \$5,000 into respondent's client trust account. Respondent failed to inform Mr. Santos that he, or someone on his behalf, had settled Mr. Santos' case, that he had signed or caused somebody to sign Mr. Santos' name to the releases, had received the check for Mr. Santos, had signed, or caused somebody to sign, Mr. Santos' name to the checks, and had deposited, or caused the funds to be deposited, into respondent's client trust account.

3.        In October 2009, respondent settled Ms. Santos' case for \$6,500 without knowledge, consent or authorization. On October 3, 2009, respondent signed, or allowed somebody in respondent's office to sign, Ms. Santos' name to the releases and returned them to AAA, the other driver's insurance company. On October 7, 2009, respondent received from AAA a check for \$6,500 issued to Ms. Santos and respondent's law offices as full and final settlement of Ms. Santos' claims. On or about October 7, 2009, respondent caused or allowed somebody in respondent's office to sign the check to Ms. Santos for \$6,500 without Ms. Santos' consent and knowledge and authorization to sign the check. On October 7, 2009, respondent, or somebody in respondent's office, deposited the \$6,500 into respondent's client trust account. Respondent failed to inform Ms. Santos that he had settled Ms. Santos' case, that he had signed, or caused somebody to sign Ms. Santos' name to the releases, that respondent, or someone on his behalf, had received the check for Ms. Santos, that respondent had caused

or allowed somebody to sign Ms. Santos' name to the checks, and that respondent had deposited the funds into respondent's client trust account.

4. In or about October 2009, Ms. Reyes telephoned Ms. Santos and informed her that Ms. Santos would be receiving a letter from AAA that her case had settled. Ms. Reyes informed Ms. Santos that the letter from AAA was "a mistake" and that she should ignore the letter. Ms. Reyes told Ms. Santos the cases had not settled. These statements were knowingly false and intended to mislead the Santos' into believing that their cases had not yet settled. Respondent failed to supervise Ms. Reyes and this failure led to Ms. Reyes' misrepresentations to the Santos's. In October, 2009, Ms. Delos Santos received a letter from AAA, addressed to respondent's office, dated October 9, 2009, that stated: "Thank you for returning the executed release. Our check for \$6,500 is being sent under separate cover." Both respondent and Ms. Santos received this letter.

5. From in or about December 2008 to in or about October 2009, the Santos's made numerous inquiries regarding the status of their case to respondent's offices. Respondent and his office failed to communicate with the Santos or respond to their inquiries about their case, despite the fact respondent and his office had received their messages requesting to meet or speak with respondent. Subsequently, the Santos's became dissatisfied with respondent and hired attorney Jody Togonon to assist them. Ms. Togonon learned that the matter had been settled and that respondent had received the settlement funds. She informed the Santos of these facts. Respondent did not notify the Santos's of the settlement of their case or the receipt of their funds.

6. The following amounts were withdrawn from respondent's trust account related to the Santos matter: 1) on September 11, 2009, \$3,000 (check no. 2236) was withdrawn; 2) On October 7, 2009, \$5,000 (check no. 2239) was withdrawn; 3) On October 8, 2009, \$2,000 (check no. 2240) was withdrawn. These withdrawals depleted the funds deposited in the Santos matter. None of the \$10,000 withdrawn was delivered to or on behalf of the Santos's. The Santos funds were not maintained in respondent's client trust account. At no time did respondent account to the Santos's for the funds he received for their benefit.

7. Respondent has never provided any funds to or on behalf of the Santos's. The Santos's still owe monies for their medical expenses resulting from their automobile accident.

8. Respondent was required pursuant to the Standards attached to rule 4-100 of the Rules of Professional Conduct to maintain the following records upon receipt of client funds: a written ledger for each client on whose behalf he received funds; a written journal for each bank account containing the client funds; all bank statements and cancelled checks for each account; and a monthly reconciliation for the written ledger, the written journal, and the bank statements.

9. Respondent failed to comply with these requirements; i.e., respondent failed to maintain 1) a written ledger for the Santos's, on whose behalf he received funds; 2) a written journal for each bank account containing the client funds; 3) all bank statements and cancelled checks for each account; and 4) a monthly reconciliation for the written ledger, the written journal, and the bank statements from his client trust account. Respondent acknowledged his failure to keep these records in a meeting with the State Bar investigator in this matter.

10. On or about August 11, 2011, respondent, through his counsel, denied to the State Bar that respondent was ever hired by the Santos, that there was a retainer agreement signed by the Santos's, that he settled a personal injury related civil case on their behalf, and claimed that he had no knowledge of the disposition of funds on their behalf. He claimed that he had no records for the Santos'

matter or funds. Respondent subsequently reported to the State Bar that he believed that one of his employees, Lizette Reyes, had been obtaining clients, settling cases, and receiving and absconding with settlement funds all without his knowledge or consent. Respondent has since terminated Ms. Reyes' employment.

## II. CONCLUSIONS OF LAW:

11. By causing or allowing somebody in respondent's office to settle the Santos case without their consent, knowledge, or authorization, and by signing, or causing to be signed, the Santos' names to the releases and checks without their consent, knowledge, or authorization, and by failing to supervise Ms. Reyes and misrepresenting or allowing Ms. Reyes to make a misrepresentation that the AAA letter was a mistake, respondent committed an act or acts involving moral turpitude, dishonesty or corruption, in willful violation of Business and Professions Code, Section 6106.

12. By being grossly negligent in the management of his office affairs, such that respondent did not maintain nor reconcile trust account records, respondent was unaware of funds received by his office in his name and the name of his client(s); respondent was unaware of pleadings filed in his name; respondent was unaware of the clients who had retained his services; respondent was unaware of the settlements made in his clients names; and respondent was unaware of the forgery of settlement papers and the misappropriation of the settlement funds by employees, including the misappropriation of the Santos's client funds, Respondent committed an act or acts involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code, Section 6106.

13. Respondent willfully violated Rules of Professional Conduct, rule 4-100(A); 4-100(B)(1); 4-100(B)(3); and 4-100(B)(4) by : 1) failing to maintain the balance of funds received for the benefit of the Santos' in his attorney client trust account; 2) by withdrawing the funds, or allowing the funds to be withdrawn from the trust for the Santos' and not delivering them to or on behalf of the Santos', 3) by failing to notify Santos of the receipt of her funds, and; 3) by failing to maintain records, including failing to maintain a written ledger for each client on whose behalf he received funds, a written journal for each bank account containing the client funds; all bank statements and cancelled checks for each account; and a monthly reconciliation for the written ledger, the written journal, and the bank statements; and by failing to maintain and to preserve for five years from final appropriate disposition, complete records of all client funds coming into respondent's possession.

14. Respondent willfully violated Business and Professions Code, section 6068(m), by failing to respond to the Santos's reasonable status inquiries and requests to meet or speak with respondent.

15. Respondent willfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, by failing to review his client trust account records, reconcile the client trust account statements, or properly supervise his office, and by settling, or allowing the claim to be settled, in the Santos' case without their knowledge, consent, or authorization, and by causing or allowing their names to be signed to releases and checks without their knowledge, consent, or authorization, by failing to advise the clients of the receipt of their funds and misrepresenting or allowing misrepresentations to them that the cases had not settled when in fact they had settled, and by failing to review his client trust account records, reconcile the client trust account statements, or properly supervise his office.

I. FACTS:

16. In or about the fall of 2005 Jeane Thomas suffered a car accident with an Albertson's truck. In or about 2006 she hired respondent to represent her in a personal injury claim, related to the accident, on a contingency fee basis. On April 4, 2006, respondent filed suit on Thomas's behalf, entitled *Jeane Thomas v. Albertsons, Inc and Steve Willard Dixon*, Case No. RG06263006, filed in Superior Court, County of Alameda. Respondent signed the complaint as counsel for Thomas.

17. In April, 2008, respondent settled, or allowed somebody in respondent's office to settle, Thomas's case for \$6,000 without Thomas's knowledge, consent, or authorization. On March 12, 2008, respondent caused or allowed somebody in respondent's office to sign Thomas's name to the releases and returned them to Albertson's, the defendant in the suit. A signature purporting to be respondent's signature was also on the release, although respondent stated that he himself did not sign it. On April 4, 2008, respondent received from Albertson's a check for \$6,000 issued to respondent and Jeane Thomas in settlement of Thomas's claims. Thereafter, respondent signed or caused or allowed somebody in respondent's office to sign the check to respondent and Thomas for \$6,000 without Thomas's consent and knowledge and authorization to sign the check. In April, 2008, the check was negotiated. The funds were not deposited into respondent's client trust account. The reverse side of the check was endorsed by two signatures. One signature purports to be that of respondent. Respondent states he did not sign it. The second signature purports to be that of "Jeane Thomas" but Jeane Thomas did not endorse the settlement check.

18. Shortly after receiving the settlement check, on or about April 8, 2008, respondent, or someone on respondent's behalf, filed a dismissal in the lawsuit.

19. Respondent failed to inform Thomas that he, or someone on his behalf, had settled Thomas's case, that he had signed, or caused somebody to sign Thomas's name to the releases, that respondent had received the check for Thomas, that respondent had signed, or caused somebody to sign Thomas's name to the checks, and that respondent had diverted, or caused to be diverted, the funds from Thomas.

20. In or between 2005 and 2011, Thomas called respondent on multiple occasions to find out the status of her case. Respondent, and/or respondent's staff on behalf of respondent, repeatedly advised Thomas that he was negotiating with Albertson's and in the process of settling the case.

21. In or about 2011 Thomas spoke to respondent's employee, "Lizette" (Reyes). Thomas sought to obtain her settlement funds and asked Reyes about them. Reyes advised Thomas that the check had to come from Oklahoma; that the check had to be negotiated with Health Care Recoveries, and that the check would arrive on August 8, 2011. These statements were knowingly false and intended to mislead Thomas into believing that the funds were still outstanding and would be received shortly. In fact, the funds had been received and disbursed in April, 2008, without Thomas's knowledge or consent. Respondent failed to supervise Ms. Reyes and this failure led to Ms. Reyes' misrepresentations to Thomas.

22. On or about August 2011, Thomas contacted Albertson's directly and found out that Albertson's had issued the check for \$6,000 in April, 2008. Respondent failed to notify Thomas of the receipt of her funds.



23. Respondent failed to deposit the \$6,000 in funds from Albertsons, issued on behalf of Thomas, into his attorney-client trust account. Respondent did not maintain the funds in his attorney-client trust account, nor deliver them to Thomas. Respondent misappropriated, or caused the fund to be misappropriated, to the benefit of someone other than Thomas.

24. As previously mentioned, in or between 2005 and 2011, Thomas called respondent on multiple occasions to find out the status of her case. In response to Thomas's inquiries, respondent, or respondent's staff on behalf of respondent, failed to give Thomas accurate information regarding her case. Respondent failed to advise Thomas of the settlement of her case; the receipt of settlement funds, the dismissal of the lawsuit, and the misappropriation of Thomas's funds. Instead, respondent, or respondent's staff on his behalf, gave Thomas false information about the settlement and the purported imminent arrival of the settlement proceeds.

## II. CONCLUSIONS OF LAW:

25. By causing or allowing somebody in respondent's office to settle Thomas's case without her consent, knowledge, or authorization, and by signing, or causing to be signed, Thomas's names to the releases and checks without her consent, knowledge, or authorization, and by failing to supervise Ms. Reyes and misrepresenting or allowing Ms. Reyes to make a misrepresentation that the AAA letter was a mistake, respondent committed an act or acts involving moral turpitude, dishonesty or corruption, in willful violation of Business and Professions Code, Section 6106.

26. By being grossly negligent in the management of his office affairs, such that respondent did not maintain nor reconcile trust account records; respondent was unaware of funds received by his office in his name and the name of his client(s); respondent was unaware of pleadings filed in his name; respondent was unaware of the clients who had retained his services; respondent was unaware of the settlements made in his clients names; and respondent was unaware of the forgery of settlement papers and the misappropriation of the settlement funds by employees, including the misappropriation of the Thomas' client funds, Respondent committed an act or acts involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code, Section 6106.

27. Respondent willfully violated Rules of Professional Conduct, rule 4-100(A), 4-100(B)(1); 4-100(B)(3); and 4-100(B)(4) by : 1) failing to notify Thomas of the receipt of her funds; 2) by failing to deposit and maintain the balance of funds received for the benefit of Thomas in his attorney client trust account; and 3) by failing to maintain records, including failing to maintain a written ledger for each client on whose behalf he received funds, a written journal for each bank account containing the client funds; all bank statements and cancelled checks for each account; and a monthly reconciliation for the written ledger, the written journal, and the bank statements ; and by failing to maintain and to preserve for five years from final appropriate disposition, complete records of all client funds coming into respondent's possession.

28. Respondent willfully violated Business and Professions Code, section 6068(m), by failing to respond to the Thomas's reasonable status inquiries and requests to meet or speak with respondent, but instead, through his employee, giving Thomas false information regarding her case.

29. Respondent willfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, by failing to review his client trust account records, reconcile the client trust account statements, or properly supervise his office, and by settling, or allowing the claim to be settled, in the Thomas case without her knowledge, consent, or authorization, by causing or allowing her name to be signed to releases and

checks without her knowledge, consent, or authorization, by failing to advise her of the receipt of her funds and misrepresenting or allowing misrepresentations to her that the settlement funds had not yet arrived when in fact they had been misappropriated, and by failing to review his client trust account records, reconcile the client trust account statements, or properly supervise his office.

Case No. 11-O-17584 (Complainant: Sanchez)

I. FACTS

30. On July 16, 2007, Carmelo Sanchez (hereinafter, "Sanchez") hired respondent to represent her in a personal injury claim. In or about March, 2008, respondent, or someone on his behalf, settled Sanchez's claim with Western United Insurance Company. Respondent, or someone on his behalf, settled Sanchez's claim for \$15,000 without Sanchez's knowledge, consent, or authorization. On March 8, 2008, respondent caused or allowed somebody in respondent's office to sign Sanchez's name to the releases and returned them to Western United Insurance Company.

31. On March 10, 2008, Western United Insurance Company issued a check in the sum of \$13,482.70 to respondent and Carmelo Sanchez. Western United issued a second check in the sum of \$1,517.30 to Healthcare Recoveries regarding a medical lien. In March, 2008, respondent received from Western United Insurance Company a check for \$13,482.70 issued to respondent and Carmelo Sanchez in settlement of Sanchez's claims. Thereafter, respondent signed or caused or allowed somebody in respondent's office to sign the check to respondent and Sanchez for \$13,482.70 without Sanchez's consent and knowledge and authorization to sign the check. In or about March, 2008, the check was negotiated. The funds were not deposited into respondent's client trust account. The reverse side of the check was endorsed by a signature that purported to be that of the respondent and an illegible signature that is likely purported to be that of Carmelo Sanchez.

32. Respondent failed to inform Sanchez that he, or someone on his behalf, had settled Sanchez's case, that he had signed, or caused somebody to sign Sanchez's name to the releases, that respondent, or someone on his behalf, had received the check for Sanchez, that respondent had signed, or caused somebody to sign Sanchez's name to the checks, and that respondent had diverted, or caused to be diverted, the funds from Sanchez.

33. In or about June, 2009, Sanchez called respondent to find out the status of her case. Respondent, and/or respondent's staff (Lizette Reyes) on behalf of respondent, advised Sanchez that respondent was still negotiating the claim.

34. Sanchez had received treatment from a chiropractor, Dr. Linh P. Nguyen, regarding her injuries from the accident. Dr. Nguyen asserted a lien against Sanchez's recovery in the case. Dr. Nguyen periodically contacted respondent's law office to follow up on her lien. From 2007 through September 2011, respondent, and or respondent's staff on his behalf, repeatedly told Dr. Nguyen that the matter was still in negotiation or not yet resolved. Lizzette Reyes, of respondent's law office, gave Dr. Nguyen two phone messages, one on June 21, 2011 and one on August 4, 2011, each indicating that the matter was not yet settled. In fact, respondent settled, or caused to be settled, the case and had received settlement funds in 2008.

35. Respondent, or respondent's staff on his behalf, also sent Dr. Nguyen several letters containing false information about the claim. These letters include the following: 1) on September 3, 2010 respondent sent a letter to Nguyen representing that the matter was still in negotiations and that a counter-offer had just been made; 2) respondent sent Nguyen a letter dated August 2, 2010, purported to

be a copy of the negotiations in progress. This letter was represented to be from Lincoln Litigation, dated August 2, 2010, and the contents of the letter referred to outstanding settlement offers; 3) respondent sent a letter to Nguyen purported to be dated December 21, 2010 and addressed to Lincoln Litigation, and the contents of the letter referred to an arbitration and a request to reschedule the arbitration; 4) respondent sent Nguyen a letter purported to be dated June 9, 2011, from Lincoln Litigation, regarding the case, and the contents of the letter referred to settlement discussions; 5) respondent sent Nguyen a letter purported to be dated June 17, 2011 from Lincoln litigation, regarding the case, and the contents of the letter referred to an arbitration award; 6) On or about August 11, 2011, respondent sent Nguyen a proposed settlement disbursement sheet, and stated that the last offered amount was \$9,200 and that these funds had been accepted by "Lincoln Litigation". The representations in each of the letters that respondent, or someone on his behalf, sent to Nguyen were false. In fact, the claim had settled; and respondent had received the settlement funds in 2008. Respondent failed to notify Sanchez of the receipt of her funds.

36. Respondent failed to deposit the \$13,482.70 in funds from Western United Insurance Company, issued on behalf of Sanchez, into his attorney-client trust account. Respondent did not maintain the funds in his attorney-client trust account, nor deliver them to Sanchez. Respondent, or someone in his office, misappropriated the funds to own use and benefit. At no time did respondent account to Sanchez for the funds he received for her benefit. Respondent has never provided any funds to Sanchez.

37. Respondent was required pursuant to the Standards attached to rule 4-100 of the Rules of Professional Conduct to maintain the following records upon receipt of client funds: a written ledger for each client on whose behalf she received funds; a written journal for each bank account containing the client funds; all bank statements and cancelled checks for each account; and a monthly reconciliation for the written ledger, the written journal, and the bank statements. Respondent failed to comply with these requirements, i.e. respondent failed to maintain 1) a written ledger for Sanchez, on whose behalf he received funds; 2) a written journal for each bank account containing the client funds; 3) all bank statements and cancelled checks for each account and 4) a monthly reconciliation for the written ledger, the written journal, and the bank statements from her client trust account.

38. As previously mentioned, Sanchez called respondent in, 2009 to find out the status of her case. In response to Sanchez's inquiry, respondent, or respondent's employee(s) on behalf of respondent, failed to give Sanchez accurate information regarding her case. Respondent failed to advise Sanchez of the settlement of her case; the receipt of settlement funds, the dismissal of the lawsuit, and the misappropriation of Sanchez's funds. Instead, respondent, or respondent's staff on his behalf, gave Sanchez false information about the settlement and the purported imminent arrival of the settlement proceeds.

39. As previously mentioned, Dr. Nguyen periodically contacted respondent's law office to follow up on his lien. From 2007 through September 2011, respondent, and or respondent's staff on his behalf, repeatedly told Dr. Nguyen that the matter was still in negotiation or not yet resolved. Respondent failed to advise Dr. Nguyen of the settlement of the Sanchez case; the receipt of settlement funds. Instead, respondent, or respondent's staff on his behalf, gave Dr. Nguyen false information about the settlement negotiations.

## II. CONCLUSIONS OF LAW:

40. By causing or allowing somebody in respondent's office to settle Sanchez's case without her consent, knowledge, or authorization, and by signing, or causing to be signed, Sanchez's

names to the releases and checks without her consent, knowledge, or authorization, and by failing to supervise Ms. Reyes and misrepresenting or allowing Ms. Reyes to make a misrepresentations to Dr. Nguyen, respondent committed an act or acts involving moral turpitude, dishonesty or corruption, in willful violation of Business and Professions Code, Section 6106.

41. By being grossly negligent in the management of his office affairs, such that respondent did not maintain nor reconcile trust account records; respondent was unaware of funds received by his office in his name and the name of his client(s); respondent was unaware of pleadings filed in his name; respondent was unaware of the clients who had retained his services; respondent was unaware of the settlements made in his clients names; and respondent was unaware of the forgery of settlement papers and the misappropriation of the settlement funds by employees, including the misappropriation of the Sanchez's client funds, Respondent committed an act or acts involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code, Section 6106.

42. Respondent willfully violated Rules of Professional Conduct, rule 4-100(A), 4-100(B)(1); 4-100(B)(3); and 4-100(B)(4) by: 1) failing to notify Sanchez of the receipt of her funds; 2) by failing to deposit and maintain the balance of funds received for the benefit of Sanchez in his attorney client trust account; and 3) by failing to maintain records, including failing to maintain a written ledger for each client on whose behalf he received funds, a written journal for each bank account containing the client funds; all bank statements and cancelled checks for each account; and a monthly reconciliation for the written ledger, the written journal, and the bank statements; and by failing to maintain and to preserve for five years from final appropriate disposition, complete records of all client funds coming into respondent's possession.

43. Respondent willfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, by failing to review his client trust account records, reconcile the client trust account statements, or properly supervise his office, and by settling, or allowing the claim to be settled, in the Sanchez case without her knowledge, consent, or authorization, by causing or allowing her name to be signed to releases and checks without her knowledge, consent, or authorization, by failing to advise her of the receipt of her funds and misrepresenting or allowing misrepresentations to her that the settlement funds had not yet arrived when in fact they had been misappropriated, and by failing to review his client trust account records, reconcile the client trust account statements, or properly supervise his office.

Case No. 12-O-11909 (Complainant: Galvez)

I. FACTS

44. In 2005 Jessie Galvez hired respondent to represent him in his ongoing family law matter, *Gene Galvez vs. Jesse Galvez*, case no. FF05219981, filed in Superior Court, County of Alameda. Galvez paid respondent \$1,500 initially to handle a TRO matter and another \$1,500 to handle the ongoing dissolution. Respondent appeared and represented Galvez at the TRO.

45. On May 16, 2008 the matter came to hearing on reserve issues related to equalizing payments and spousal support. Galvez was represented by a special appearance counsel, not the respondent. However, respondent had arranged for the special appearance counsel and retained ultimate responsibility for the case. Counsel for the opposing side,(Galvez's ex-wife) attorney Elaine Affronti-reduced the court's orders made on May 16, 2008 to a proposed order after hearing, (OAH) and forwarded it to respondent and/or the special appearance counsel. Thereafter, respondent failed to ascertain the status of the OAH, failed to confirm whether it conformed to the Court's orders, and failed

to take action to establish a final OAH. From the date of the hearing to the present, no formal OAH has been obtained for the rulings at this hearing.

46. Pursuant to the May 16, 2008 OAH, Galvez owed \$833 a month to his ex-spouse in spousal support payments. Galvez made payments to respondent's law office. Each payment was for \$833 and the payments were provided on the following dates: 4/10/2009; 7/31/2009; 7/31/2009 (two payments made on this date, check nos. 95 and 96) 8/21/09; 11/19/09; 12/31/09; 1/28/10; 2/28/10; 3/30/10; 5/12/10; 5/27/10; 6/30/10; 7/31/10; 8/31/10; 9/30/10; 12/17/10; 1/7/11; 2/28/11; 3/11/11; 5/31/11; 6/30/11; 7/1/11; 7/20/11; 7/27/11; 7/29/11. There were a total of 25 payments. As to each of these payments, Galvez requested that respondent forward the payments to his ex wife. The first four of the checks were forwarded to Galvez's ex-wife as instructed. As to the remaining checks, totaling a sum of \$17,493, respondent, or respondent's employees on his behalf, failed to forward the check's to Galvez's ex-wife, failed to deposit and/or maintain the funds in the attorney-client trust account. Respondent, or someone on his behalf, misappropriated Galvez's \$17,493 in funds. Respondent, or someone on his behalf, forged the signature of Galvez's ex-wife on the checks and cashed the checks. In November, 2011, respondent advised Galvez that the funds has been misappropriated and apologized to Galvez. At no time prior to that point did respondent advise Galvez that the funds had not been forwarded to Galvez's ex-wife or that the funds had been misappropriated.

47. Respondent's fee was not fully earned. By failing to complete the OAH on May 16, 2008, respondent failed to complete his services to Galvez. Respondent did not provide Galvez with an accounting of his fees nor return any unearned fees. At least one half of the fees paid (\$1,500) were not earned.

48. For the time period in question, November, 2009 through July, 2011, respondent failed to maintain financial records, including failing to maintain a written ledger for each client on whose behalf he received funds, a written journal for each bank account containing the client funds; all bank statements and cancelled checks for each account; and a monthly reconciliation for the written ledger, the written journal, and the bank statements; and he failed to maintain and to preserve for five years from final appropriate disposition, complete records of all client funds coming into respondent's possession.

49. On or about November, 2011, Galvez terminated respondent's services and obtained new counsel to proceed with his ongoing family law matters.

### III. CONCLUSIONS OF LAW:

50. By failing to approve the OAH or otherwise complete the final order after the May 16, 2008 hearing, respondent failed to perform, in willful violation of Rules of Professional Conduct, rule 3-110(A).

51. By failing to refund \$1,500 to Galvez, respondent failed to refund an unearned fee, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

52. By failing to advise Galvez of the misappropriation of the spousal support payments of 11/19/09 through 7/29/2011, until November, 2011, respondent failed to keep the client reasonably informed of matters in which the respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6069(m).

53. Respondent willfully violated Rules of Professional Conduct, rule 4-100(A), 4-100(B)(1); 4-100(B)(3); and 4-100(B)(4) by: 1) failing to deposit, maintain, and/or forward the balance of funds received from Galvez for the benefit of Galvez's ex-wife in his attorney client trust account; and 2) by failing to maintain records, including failing to maintain a written ledger for each client on whose behalf he received funds, a written journal for each bank account containing the client funds; all bank statements and cancelled checks for each account; and a monthly reconciliation for the written ledger, the written journal, and the bank statements; and by failing to maintain and to preserve for five years from final appropriate disposition, complete records of all client funds coming into respondent's possession.

54. By being grossly negligent in the management of his office affairs, such that respondent was unaware of funds received by his office in his name and the name of his client(s), including the Galvez funds, and by failing to account for the funds he received from Galvez from 4/11/09 through 7/29/2011, a period in excess of two years; and by failing to maintain nor reconcile trust account records for this time period: and by failing to supervise staff such that respondent was unaware of the forgery of spousal support payment checks and the misappropriation of the Galvez funds by employees, Respondent committed an act or acts involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code, Section 6106.

#### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was March 19, 2012.

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct call for disbarment for willful misappropriation of entrusted funds or property. (Standard 2.2(a)). The Standards also call for excessive discipline, in that the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding (Standard 1.7(a)).

Here, the State Bar is proceeding on the basis of gross negligence amounting to moral turpitude. *Giovanazzi v. State Bar* (1980) 28 Cal. 3d. 465. The case law supports lengthy suspension up to disbarment for misappropriation of client funds in such a manner.

If called to testify, respondent in this case would testify that his employee misappropriated the client funds. He would also state that he failed to review pleadings filed in his name, before they were filed in court (the Thomas matter); he failed to review or be aware of correspondence sent out by his office over a protracted period of time (the letters to Dr. Nguyen in the Sanchez matter) and that he did not keep, maintain, nor review client trust account records during the applicable time period of these four client misappropriation matters, spanning a period from 2005 through 2011, a period of six years. He further states he was unaware of client's requests for information or the representations made to the clients on his behalf. If called to testify, respondent would state that he was unaware that his office had these clients (Thomas, Delos Santos and Sanchez), and that he was unaware that Galvez was depositing funds to his office to be conveyed to his ex-wife. In this case, three matters were settled without the client's knowledge or consent, three settlement releases were forged in the names of the clients, and three checks were received and cashed, (Thomas, Sanchez) or deposited to respondent's trust account (De los Santos) and then withdrawn, totaling a sum of \$30,982.70 in misappropriated funds. And additional \$17,493 was misappropriated in the Galvez matter.

Respondent has prior discipline for similar misconduct. He is currently on a one year suspension for misappropriation of \$6,000 in client funds and failure to pay court sanctions in a second matter.

In *In the Matter of Connor* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, the attorney misappropriated client funds in a single matter and was disbarred. Some of the misconduct was caused by respondent himself, and some by his employee, Ray Robinson. The attorney testified that he did not authorize disbursements from the trust account made by his employee in the Spittler matter. The Court found that the respondent's conduct amounted to gross negligence. The respondent permitted the employee to simulate respondent's signature on checks and also failed to instruct the employee in trust account requirements and he did not undertake regular examination of Robinson's records or the firm's bank statements. "These slipshod procedures allowed a substantial sum of entrusted funds to be misappropriated without respondent's knowledge." The total misappropriation of funds amounted to \$26,699.56.

In *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr 627, the attorney abdicated her responsibility to supervise her trust account which enabled her non-attorney office staff to steal \$1.7 million from her client trust account over a period of one and one half years. The attorney had a large personal injury practice. She authorized the employees to sign her client trust account checks and deposit funds to the trust account. She negotiated the settlements for the clients. She also determined the amounts to be disbursed from the settlements and direct the employee to prepare the disbursement checks. The checks were prepared, but they were not sent out as she had directed. When the respondent suspected misconduct of her staff and alerted the bank, she returned to the office to find that all her client files had been removed. The respondent made full restitution on all client matters that she was able to ascertain. (Since her files were stolen, the Court found that she failed to identify all the clients that were harmed). The respondent had no prior discipline in ten years of practice. The Court imposed an eighteen month actual suspension. The Court found that the respondent "gave control of her trust account to her bookkeeper and then failed to supervise the management of the account or to examine the bank statements or other records. The result was a theft of 1.7 million. 'Any procedure so lax as to produce that result was grossly negligent (Palomo v. State Bar, supra, 36 Cal. 3d. at p.796, fn.8.). We conclude based on the above that respondent is culpable of engaging in acts of moral turpitude in violation of section 6106 by breaching her fiduciary duty to safeguard client funds." Malek-Yonan, supra, at p. 635.

While respondent's case is less aggregate money than Malek-Yonan, it is more egregious in several respects. The conduct in Malek-Yonan spanned a one and one-half year period, while respondent's misconduct spans a six year period. Malek-Yonan has no prior misconduct, while respondent has a prior for similar misconduct. Malek-Yonan negotiated her own settlements, and approved and authorized the checks, she was unaware that the checks were not disbursed as she had instructed. In contrast, respondent herein claims no knowledge of the cases whatsoever, even when pleadings were filed in his name, letters were written in his name, and representations to the clients were made in his name. Thus, the scope of his failure to supervise the management of his staff encompassed all aspects of his practice as well as a much more significant time period. The clients in Malek-Yonan did approve their settlements and sign the settlement releases, whereas in respondent's cases, the settlements were not approved and the releases were forged. And Malek-Yonan made full restitution to all the clients she was able to find, while respondent still owes over \$48,000 in restitution.

In *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. Stat Bar. Ct. Rptr 119, the attorney received an eighteen-month actual suspension, and until payment of restitution, for recklessly disregarding his trust account obligations for almost a year, involving \$34,000 in settlement funds. The

attorney admitted to “extremely sloppy” and “all wrong” handling of his trust account. The Court found that the respondent committed moral turpitude. “Gross negligence or recklessness in discharging one’s duties as an attorney involves moral turpitude and thereby violates section 6106.” (Sampson, *supra*. at p. 127). The majority of the funds were owed to one medical lienholder, Byrnes. Respondent testified that he thought Byrnes had loaned him the money. The court found moral turpitude for failing to retain settlement funds in trust. He had no prior discipline in nineteen years of practice. In contrast to *Sampson*, respondent’s misconduct spanned a six-year period, and encompassed all areas of his practice, as he was “sloppy” and “all wrong” about filing pleadings, signing up clients, negotiating settlements, handling settlement funds, and he did not keep any trust account records.

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

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 16, 2012, the prosecution costs in this matter are \$6,262.10. 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.

#### **WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY**

The parties waive any variance between the Notice of Disciplinary Charges filed on 12/22/2011 (Case no. 11-O-13019) and 3/8/2012 (Case no.s 11-O-17366; 11-O-17584) and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of another Notice of Disciplinary charges and/or an Amended Notice of Disciplinary Charges, and further waive the right to the filing of a Notice of Disciplinary charges and a formal hearing on any charge, including all charges related to case no. 12-O-11909, (the Galvez matter).


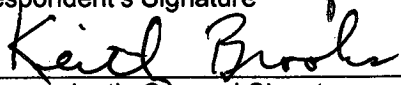
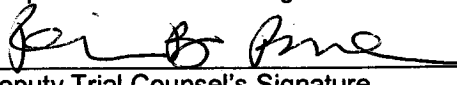


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In the Matter of: Brian Ching	Case number(s): 11-O-13019; 11-O-17366; 11-O- 17584 ad 12-O-11907
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**SIGNATURE OF THE PARTIES**

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.

_____		_____
Date	Respondent's Signature	Print Name
_____		_____
Date	Respondent's Counsel Signature	Print Name
4/5/2012		_____
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: <b>BRIAN YUN KONG CHING</b>	Case Number(s): 11-O-13019 et al.
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### DISBARMENT 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:

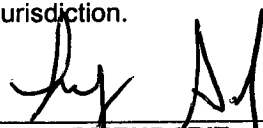
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

1. On page 9 of the stipulation, numbered paragraph 25, “and by failing to supervise Ms. Reyes and misrepresenting or allowing Ms. Reyes to make a misrepresentation that the AAA letter was a mistake” is deleted, and in its place is inserted “and by failing to supervise Ms. Reyes”;
2. On page 13 of the stipulation, numbered paragraph 52, “6069(m)” is deleted, and in its place is inserted “6068(m)”; and
3. On page 14 of the stipulation, numbered paragraph 54, “trespondent” is deleted, and in its place is inserted “respondent”.

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.)**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent’s inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court’s order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Apr. 16, 2012  
Date

  
**LUCY ARMENDARIZ**  
Judge of the State Bar Court

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**DECLARATION OF SERVICE BY REGULAR MAIL**

**CASE NUMBER: 11-O-13019; 11-O-17366; 11-O-17584; 12-O-11909**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco, on the date shown below, a true copy of the within

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT - DISBARMENT**

in a sealed envelope placed for collection and mailing at San Francisco, on the date shown below, addressed to:

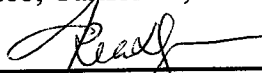
**KEITH BROOKS  
1344 LINCOLN STREET  
BERKELEY, CA 94702**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

**N/A**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

DATED: April 5, 2012

Signed:   
ANNA REA DUNGO  
Declarant

## 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 April 16, 2012, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND  
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

W. KEITH BROOKS  
1344 LINCOLN ST  
BERKELEY, CA 94702

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

ROBIN B. BRUNE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 16, 2012.

  
\_\_\_\_\_  
Mazie Yip  
Case Administrator  
State Bar Court