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State Bar Court of California Hearing Department San Francisco		
<p>Counsel For The State Bar</p> <p>Christine Souhrada Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 Phone: (415) 538-2183 Fax: (415) 538-2284</p> <p>Bar # 228256</p>	<p>Case Number (s) 11-O-13592</p>	<p>(for Court's use)</p> <p style="text-align: center;">PUBLIC MATTER</p> <p style="text-align: center;">FILED</p> <p style="text-align: center;">MAR 16 2012</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Russell K. Ryan Motschieder, Michaelides, et al 1690 W Shaw Ave Ste 200 Fresno, CA 93711 Phone: (559) 439-4000</p> <p>Bar # 139835</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: Leo A. Akulian</p> <p>Bar # 208006</p> <p>A Member of the State Bar of California (Respondent)</p>		

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 July 10, 2000.
- (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 12 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - costs to be paid in equal amounts prior to February 1 for the following membership years: 2013 and 2014. Should the effective date of the Supreme Court Order approving this stipulation be later than February 1, 2013, costs are to be paid in equal amounts prior to February 1 for the two billing cycles following the effective date of the Supreme Court Order.
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs 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 09-O-11933
 - (b) Date prior discipline effective July 27, 2011
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct, rule 3-110(A) and Business and Professions Code, section 6106
 - (d) Degree of prior discipline Two years stayed suspension, 90 days actual suspension, two years probation
 - (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.
- (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.

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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.
- (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. Upon discovering that he had failed to file the client's case within the statute of limitations, Respondent immediately informed his client of his failure and further informed his client of her right to sue him for malpractice. He communicated this information to his client not only verbally, but by letter as well.
- (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.

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- (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 four 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 two 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 90 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 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: Respondent attended Ethics School on August 18, 2011 and passed the test given at the end of the session.
- (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

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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 321(a)(1) & (c), 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:** If respondent takes and passes the MPRE in compliance with his probation in case no. 09-O-11933 between now and the time respondent's probation begins in this matter, that compliance will satisfy the MPRE requirement set forth in this present stipulation.

(Do not write above this line.)

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Law Office Management Conditions

- a. Within 60 days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within days/ months/one years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than six hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for one year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

Other:

Attachment to Stipulation Re Facts, Conclusions of Law and Disposition
in the Matter of Leo A. Akulian

Case nos. 11-O-13592

I. Facts

1. On March 3, 2010 Respondent and Stacey Walker (hereinafter "Walker") signed a contingency fee agreement wherein Respondent agreed to represent Walker in the recovery of all damages to which Walker was legally entitled as a result of an automobile accident on February 24, 2009.

2. On March 5, 2010, Respondent's office sent a letter to Geico Insurance Company (hereinafter "Geico") informing them of the representation and requesting evidence.

3. On March 11, 2010, May 7, 2010 and August 20, 2010 Geico wrote letters to Respondent requesting information regarding Walker's injuries and physicians and requesting that Walker sign releases to permit Geico to obtain her medical and wage information. Respondent did not respond, nor provide the requested information.

4. On March 25, 2010, May 7, 2010, July 12, 2010, August 20, 2010, September 10, 2010, October 11, 2010, November 18, 2010, and December 23, 2010, a Geico representative called Respondent and left messages for him to call back regarding Walker's claim. Respondent did not return any of the calls to the Geico representative(s).

5. On April 27, 2010, September 10, 2010, and February 3, 2011, Walker sent e-mail messages to Respondent requesting an update on the status of her matter and inquiring whether Respondent required additional information from her. Respondent did not respond to Walker's April 27, 2010 or September 10, 2010 e-mails.

6. On February 4, 2011 Respondent called Walker and told her that her lawsuit was being prepared for filing. On that same day, Respondent's assistant, Susan Smith (hereinafter "Smith") also informed Walker that Respondent was preparing to file her case in court.

7. On February 7, 2011, February 11, 2011, and February 18, 2011, Walker called Respondent's office. On each occasion she left a voice message for Smith.

Walker's telephone calls were never returned.

8. On February 24, 2011 the statute of limitations ran in Walker's personal injury matter.

9. On March 1, 2011 Respondent telephoned Walker and stated that he had failed to timely file the lawsuit. Respondent apologized, and advised Walker to seek legal counsel and file a legal malpractice suit against him. On that same day, Respondent also sent a letter to Walker reiterating that he had not timely filed a lawsuit on her behalf and advised her to seek legal advice and discuss a potential malpractice lawsuit against him and his firm.

II. Conclusions of Law

10. By failing to provide Geico with the information requested on March 11, 2010, May 7, 2010 and August 20, 2010; failing to respond to the Geico representative's telephone messages of March 25, 2010, May 7, 2010, July 12, 2010, August 20, 2010, September 10, 2010, October 11, 2010, November 18, 2010, and December 23, 2010; and failing to timely file a lawsuit on behalf of Walker, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

11. By failing to respond to Walker's April 27, 2010 and September 10, 2010 emails and February 7, 2011, February 11, 2011 and February 18, 2011 telephone calls, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code, section 6068(m).

III. Supporting Authority

According to the Standards for Attorney Sanctions for Professional Misconduct, a prior record of discipline is considered an aggravating factor (see Std 1.2(b)(1)).

Standard 1.7(a) states that if a member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding.

However, where the facts of particular case or misconduct would make the discipline recommended under the standards excessive, the court has deviated from the standards in the interests of justice, recognizing that each case must be resolved on its own particular facts. (See *In the Matter of Moriarty*, (Rev. Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245; *Boehme v. State Bar*, (Cal. 1988) 47 Cal. 3d 448; *Greenbaum v. State Bar*, (Cal. 1987) 43 Cal. 3d 543; and *In the Matter of Stewart* (Rev. Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52)

The cases involving an attorney who fails to perform by missing a filing deadline vary greatly in the level of discipline imposed. See *In the Matter of Riordan* (Rev. Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 [The attorney, who had no prior discipline, received six months *stayed* suspension for not only failure to act competently by missing a filing deadline, but also for failing to obey two court orders in violation of Business and Professions Code, section 6103, and failing to report judicial sanctions.]; and *Hansen v. State Bar* (1978) 23 Cal. 3d 68 [An attorney with no record of discipline received six months *actual* suspension not only for failing to file a personal injury complaint within the statute of limitations but also for committing an act of moral turpitude by concealing this fact from his client for five years].

Further the cases involving a missed filing deadline in which the attorney received actual suspension generally also included acts of moral turpitude such as concealment or a significant amount of serious additional misconduct. See *Hansen v. State Bar* (1978) 23 Cal. 3d 68; and *In the Matter of Kaplan* (Rev Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547 [An attorney with a prior of 90 days actual suspension missed the filing deadline in a personal injury case case after multiple inquiries from the client; however, the cases also involved serious additional misconduct involving ten client matters].

Although Respondent has a prior record of discipline, which the attorney in *Riordan* did not have, Respondent's misconduct is less serious than that in *Riordan*. Further, unlike *Hansen*, Respondent's misconduct did not involve any concealment or other moral turpitude. To the contrary, Respondent immediately informed his client of his failure to file within the statute of limitations and of her right to sue Respondent for

malpractice. Because Respondent's misconduct was limited to failing to perform competently and communicate in a single client matter, and did not include concealment or dishonesty, or any other more serious misconduct, discipline of 90 days actual suspension is warranted under the above-cited authorities.

IV. Pending Proceedings

The disclosure date referred to in paragraph A(7) of this stipulation, was February 21, 2012.

V. Estimate Of Costs Of Disciplinary Proceedings

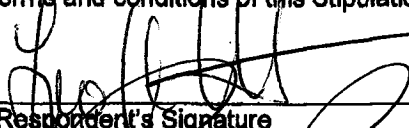
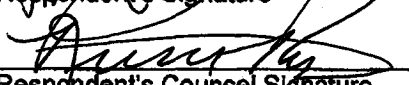

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of February 16, 2012, the estimated prosecution costs in this matter are approximately \$3,284. Respondent acknowledges that this figure is an estimate only. Respondent further acknowledges that should 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.

(Do not write above this line.)

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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>2-23-12</u> Date	 Respondent's Signature	<u>Leo A. Akulian</u> Print Name
<u>2/23/12</u> Date	 Respondent's Counsel Signature	<u>Russell Ryan</u> Print Name
<u>2/24/12</u> Date	 Deputy Trial Counsel's Signature	<u>Christine Souhrada</u> Print Name

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In the Matter of: LEO A. AKULIAN SBN 208006	Case Number(s): 11-O-13592
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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.

On page 6 of the stipulation, the "X" in the first box in paragraph F(1) is DELETED so as to remove the requirement that respondent take and pass the Multistate Professional Responsibility Examination.

On page 6 of the stipulation, an "X" is INSERTED in the second box in paragraph F(1), and following the pre-printed text "No MPRE recommended. Reason;" the following text is INSERTED after the word "Reason":

Under the Supreme Court's June 27, 2011 disciplinary order in case number S192386 (State Bar Court case number 09 O 11933), respondent is required to take and pass the MPRE no later than July 27, 2012. If respondent fails to do so, he will be suspended from the practice of law until he does. (See Segretti v. State Bar (1976) 15 Cal.3d 878, 891, fn. 8; but see also Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rule 5.162.) Accordingly, it would be inappropriate to recommend that respondent be again ordered to take and pass the MPRE in the present proceeding.

On page 6 of the stipulation, paragraph F(5) is DELETED in its entirety.

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.)**

March 16, 2011

Date


LUCY ARMENDARIZ
Judge of the State Bar Court

(Effective January 1, 2011)

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 March 16, 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 San Francisco, California, addressed as follows:

RUSSELL K. RYAN
MOTSCHIEDLER, MICHAELIDES, ET AL
1690 W SHAW AVE STE 200
FRESNO, CA 93711

- 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:

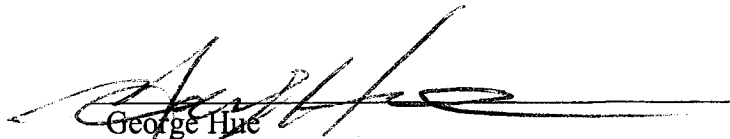
- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- 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:

Christine Souhrada, Enforcement, San Francisco

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


George Hue
Case Administrator
State Bar Court