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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		
<p>Counsel For The State Bar</p> <p>Rosalba L. Gutierrez Deputy Trial Counsel Office of the Chief Trial Counsel 1149 South Hill Street Los Angeles, CA 90015-2299 (213) 765-1671</p> <p>Bar # 270469</p>	<p>Case Number(s): 11-O-14672-DFM</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 1.2em; font-weight: bold;">FILED</p> <p style="text-align: center; font-weight: bold;">FEB 21 2012</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p style="text-align: center; font-size: 1.5em; opacity: 0.5;">PUBLIC MATTER</p>
<p>In Pro Per Respondent</p> <p>Edward Anthony Esqueda 1455 West Beverly Blvd. Montebello, CA 90640 (323) 727-7763</p> <p>Bar # 146057</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: Edward Anthony Esqueda</p> <p>Bar # 146057</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 May 21, 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 12 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."
 - 1.
 - (a) 00-O-11007
 - (b) June 19, 2001
 - (c) rule 3-700(D)(1) [failure to promptly release file]; B&P 6068(m) [failure to respond to client inquiries]; B&P 6068(m) [failure to keep client informed of significant development].
 - (d) private reproof
 - 2.
 - (a) 06-O-13716 et. al.
 - (b) September 24, 2011
 - (c) rule 4-100(A) [misuse of client trust account]
 - (d) 90-day actual suspension

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- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (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.
- (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

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establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.

- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

Respondent acknowledged his wrongdoing and has cooperated with the State Bar by entering into a stipulation to settle this matter.

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 one (1) year, 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 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:**
- Respondent's timely fulfillment of Ethics School and MPRE conditions attached to the actual suspension imposed in case number 06-O-13716 et.al. shall be deemed to satisfy those conditions imposed herein, even if such fulfillment pre-dates the effective date of discipline in this matter.

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In the Matter of: Edward Anthony Esqueda	Case Number(s): 11-O-14672-DFM
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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
Beatriz Anali-Bojorquez or Sergio Beltran-Negrete	\$7,500	December 31, 2010

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than three (3) months from the effective date of the disciplinary order.

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 revocation), 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

- 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.

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:
- 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";

- 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.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Edward A. Esqueda

CASE NUMBER(S): 11-O-14672-DFM

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.

FACTS:

1. On May 12, 2010, an indictment was filed in United States District Court, District of Utah, Central Division, against Sergio Alberto Beltran-Negrete ("Beltran") and others titled *United States of America v. Milton Antonio Borjas*, Case No. 2:10-cr-00377-DB-2 ("*U.S. v. Borjas*"). The indictment charged Beltran and others with the possession of methamphetamine with intent to distribute and possession of a firearm in furtherance of a drug trafficking crime.
2. On July 2, 2010, Beltran's wife, Beatriz Anali-Bojorquez ("Bojorquez") employed Respondent to represent Beltran and paid him \$5,000 in advanced attorney's fees on behalf of Beltran.
3. In July 2010, Respondent obtained and reviewed the criminal case file concerning *U.S. v. Borjas*.
4. On August 16, 2010, Respondent traveled from Los Angeles, California to Ogden, Utah (where Beltran was incarcerated) to meet with Beltran. During their meeting, Respondent and Beltran were unable to reach an agreement regarding the presentation of Beltran's defense and the probable outcome of *U.S. v. Borjas*. Consequently, it was agreed by Respondent and Beltran that Respondent would attempt to negotiate a settlement of *U.S. v. Borjas*, but would not substitute into the matter and defend Beltran.
5. Respondent's efforts to negotiate a settlement of *U.S. v. Borjas* after August 16, 2010 were *de minimis* and did not benefit Beltran.
6. Between September 10, 2010 and September 13, 2010, Respondent was paid an additional \$7,000 in advanced attorney's fees, for a total of \$12,000.
7. On October 10, 2010, Beltran sent Respondent a letter terminating Respondent's legal services and asking for a full refund of the \$12,000 that Respondent had received as advanced attorney's fees.
8. According to Respondent, he has earned \$4,500 of the advance attorney's fees. However, Respondent has not refunded any portion of the remaining \$7,500 he received as advanced attorney's fees. Respondent contends that his failure to refund was caused by Beltran's continued incarceration and Bojorquez's return to Mexico, which left him with no one to whom to refund the unearned advanced attorney's fees.

CONCLUSIONS OF LAW

9. By failing to take effective action to negotiate a settlement of *U.S. v. Borjas* after August 16, 2010, Respondent failed to perform services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.
10. By not refunding any of the unearned advance attorney's fees of \$7,500, Respondent failed to refund promptly any part of a fee paid in advance in willful violation of rule 3-700(D)(2).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was February 1, 2012.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct ("Standard(s)") provides that the primary purposes of attorney discipline are, "the protection of the public, the courts and the legal profession; the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession."

Standard 1.7(a) provides that if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline as defined in Standard 1.2(f), the degree of discipline in the current proceeding shall be greater than that imposed in the prior proceeding unless it was so remote or the offense for which it was imposed was so minimal in severity that imposing greater discipline would be manifestly unjust.

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

Standard 2.4(b) provides that culpability of a member of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of willfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.10 provides that culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a willful violation of any Rule of Professional conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3. [rule 3-700(D)(2)].

CASE LAW

The parties submit that it would be manifestly unjust to apply Standards 1.7(a) and (b) in this matter without deviation for the following reasons.

First, Respondent and the State Bar entered into the Stipulation re Facts, Conclusions of Law and Disposition and Order Approving Actual Suspension ("2011 Stipulation") filed on May 2, 2011 in case no. 06-O-13716 *et. al.* The complaint in this matter was filed on December 28, 2011, concerning misconduct that occurred between August 16, 2010 and early 2011. Because Respondent had not yet entered into the 2011 Stipulation when he engaged in the current misconduct, he did not have the benefit of the 2011 Stipulation in deterring his misconduct and recognizing the seriousness of the present matter. *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201.

Second, Respondent and the State Bar agree that had this matter been included in the 2011 Stipulation, it would not have increased the level of discipline in the Stipulation. *See e.g., In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar. Ct. Rptr. 602, 619.

The parties further submit that the intent and goals of Standard 1.3 are met in this matter by the imposition of an additional year of probation.

COSTS OF DISCIPLINARY PROCEEDINGS.

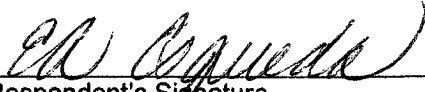
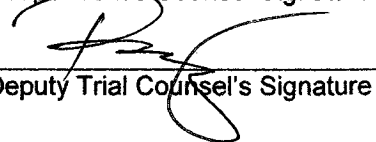
Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of, February 1, 2012, the prosecution costs in this matter are approximately \$3,269. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: Edward Anthony Esqueda	Case number(s): 11-O-14672-DFM
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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>2/2/12</u> Date	<u></u> Respondent's Signature	<u>Edward Anthony Esqueda</u> Print Name
<u>_____</u> Date	<u>N/A</u> Respondent's Counsel Signature	<u>N/A</u> Print Name
<u>2/2/12</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Rosalba L. Gutierrez</u> Print Name

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In the Matter of: Edward Anthony Esqueda	Case Number(s): 11-O-14672-DFM
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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.

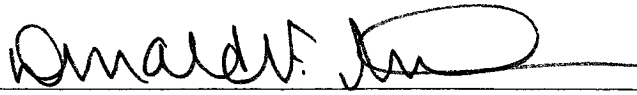
On page 6 of the stipulation, paragraph E(7) is MODIFIED to read in its entirety as follows: "No Ethics School Recommended. Reason: Respondent was recently required, in case number S194065, to attend and pass Ethics School. (See Rules Proc. of State Bar, rule 5.135(A).)"

On page 6 of the stipulation, paragraph F(1) is MODIFIED to read in its entirety as follows: "No MPRE recommended. Reason: The Supreme Court recently ordered respondent, in case number S194065, to take and pass the MPRE. If respondent fails to take and pass the MPRE as ordered in case number S194065, 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.)"

On page 6 of the stipulation, paragraph F(2) 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.)**

2/21/12
Date


Judge of the State Bar Court **DONALD F. MILES**

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on February 21, 2012, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

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

**EDWARD A. ESQUEDA
1455 W BEVERLY BLVD
MONTEBELLO, CA 90640**

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

ROSALBA GUTIERREZ, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 21, 2012.



Tammy Cleaver
Case Administrator
State Bar Court