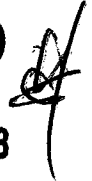


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State Bar Court of California Hearing Department San Francisco STAYED SUSPENSION		
Counsel For The State Bar Heather E. Abelson Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105-1639 (415) 538-2357 Bar # 243691	Case Number(s): 12-O-10570-PEM	For Court use only PUBLIC MATTER FILED  APR 22 2013 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Daniel Lee Harralson The Daniel Harralson Law Firm APC PO Box 26688 Fresno, CA 93729-6688 (559) 486-4560 Bar # 109322	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: HENRY DORAME NUNEZ Bar # 63412 A Member of the State Bar of California (Respondent)		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 30, 1974.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 11 pages, not including the order.



JRC

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- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - ☒ Costs are added to membership fee for calendar year following effective date of discipline.
 - ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
 - (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See "Facts Supporting Aggravating Circumstances" in the attachment hereto.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(Do not write above this line.)

- (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. See "Facts Supporting Aggravating Circumstances" in the attachment hereto.
- (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 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.

(Do not write above this line.)

(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

See "Additional Facts Re Mitigating Circumstances" in the attachment hereto.

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:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: HENRY DORAME NUNEZ

CASE NUMBER(S): 12-O-10570-PEM

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. 12-O-10570-PEM (Complainant: Thomas H. Armstrong, Esq.)

FACTS:

1. Prior to September 26, 2006, respondent was hired by James Salven ("Salven") to represent Salven in his capacity as a Chapter 7 Bankruptcy Trustee in the matter, *In Re DDJ, Inc.*, U.S. Bankruptcy Court, Eastern District of California, Fresno Division, Case No. 05-10001-A-7F ("bankruptcy matter"). Respondent was hired as "special counsel" to pursue various claims on behalf of the bankruptcy estate.
2. On September 26, 2006, respondent filed an application to be appointed special counsel in the bankruptcy matter. On October 4, 2006, the court in the bankruptcy matter issued an order authorizing Salven to employ respondent as a special counsel.
3. Prior to December 1, 2009, respondent became counsel of record on behalf of Salven and DDJ, Inc., in the matter, *Salven v. Hagobian*, Fresno County Superior Court Case No. 08CECG03585DSB ("*Hagobian* matter"). This representation was part of respondent's employment as special counsel to pursue various claims on behalf of Salven and the estate in the bankruptcy matter.
4. On December 1, 2009, the defendants propounded discovery on respondent in the *Hagobian* matter. Respondent received the discovery requests, but failed to adequately respond, failed to timely notify Salven about the discovery requests and failed to timely provide the discovery requests to Salven.
5. From November 16, 2009 through December 7, 2010, the court in the *Hagobian* matter issued orders sanctioning Salven, for a total of \$6,025 in sanctions, based on respondent's failure to timely and adequately respond to discovery. Respondent received each of the court's sanction orders and paid the sanctions, but failed to inform Salven about the sanctions.
6. On December 7, 2010, the court issued an order imposing evidentiary sanctions against Salven for respondent's failure to adequately respond to discovery. Soon thereafter, respondent received the court's December 7, 2010 order.

7. Respondent did not timely inform Salven that respondent received discovery in the *Hagobian* matter.

8. At no time during his representation of Salven did respondent inform Salven that respondent failed to timely and adequately respond to discovery in the *Hagobian* matter.

9. At no time during his representation of Salven did respondent inform Salven that sanctions in the amount of \$6,025 were imposed against Salven for respondent's failure to timely and adequately respond to discovery in the *Hagobian* matter.

CONCLUSIONS OF LAW:

10. By failing to timely provide the discovery requests to his client in the *Hagobian* matter, and by failing to timely and adequately respond to discovery in the *Hagobian* matter, which resulted in his client being monetarily sanctioned and having evidentiary sanctions imposed against him, 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 timely inform Salven about the receipt of discovery requests, by failing to inform Salven that respondent failed to adequately and timely respond to discovery and by failing to inform Salven that sanctions had been imposed against Salven based on respondent's failure to timely and adequately respond to discovery in the *Hagobian* matter, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in wilful violation of Business and Professions Code, section 6068(m).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.2(b)(iv)): Respondent substantially harmed Salven and the bankruptcy estate by causing evidentiary sanctions to be ordered against Salven. Respondent substantially harmed the administration of justice by failing to timely and adequately respond to discovery requests, causing multiple motions to compel to be filed against Salven. This substantial harm constitutes an aggravating factor pursuant to this Standard.

Multiple Acts of Misconduct (Std. 1.2(b)(ii)): Respondent violated rule 3-110(A) and Business and Professions Code section 6068(m). These multiple acts of misconduct constitute an aggravating factor pursuant to this Standard.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Discipline: Although respondent's misconduct is serious, he is entitled to substantial mitigation for having practiced law for more than 39 years without discipline. *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.

Pre-trial Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby saving State Bar Court time and resources. *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993-994.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source). The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." *In re Morse* (1995) 11 Cal.4th 184, 205; std. 1.3.

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. *In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11. Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. *In re Naney* (1990) 51 Cal.3d 186, 190. Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.

Here, respondent committed two acts of professional misconduct. Standard 1.6 (a) requires that where a respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable standards. Here, the most severe sanction is standard 2.6(a) which requires that a violation of Business and Professions Code section 6068 "shall result in disbarment or suspension depending on the gravity of the offense or harm, if any, to the victim, with due regard to the purpose of imposing discipline set forth in standard 1.3." Based on the standard, the minimum level of appropriate discipline is suspension.

Under standard 1.3, the gravity of respondent's conduct does not warrant disbarment or actual suspension. Respondent committed two acts of misconduct in a single action relating to a failure to adequately and timely respond to discovery requests. Respondent's misconduct is aggravated by multiple acts of misconduct and harm. Respondent is entitled to substantial mitigation for 39-years of discipline-free practice and for entering into a pretrial stipulation with the State Bar. Balancing the misconduct with the mitigation and aggravation, a one-year stayed suspension is appropriate.

California Supreme Court precedent further supports a one-year stayed suspension in this matter. In *Bach v. State Bar* (1991) 52 Cal.3d 1201, the California Supreme Court ordered respondent Bach actually suspended from the practice of law for thirty days, for failing to perform legal services competently for a single client, failing to communicate with his client, withdrawing from representation without client consent or court approval, failing to refund unearned fees, and failing to cooperate in the State Bar's investigation. *Id.* at 1205. The Court noted that respondent had 26 years of prior practice with no discipline. *Id.* at 1204, 1208. The Court also found that respondent's refusal to accept any responsibility for the harm caused to his client, was an aggravating factor. *Id.* at 1209.

Here, respondent's misconduct is similar to, yet less egregious than, the misconduct at issue in *Bach*. Respondent committed two acts of misconduct, as opposed to respondent Bach who committed five acts of misconduct. Respondent, like respondent Bach, is entitled to mitigation credit for no prior record of

discipline. Respondent is entitled to additional mitigation for entering into a pretrial stipulation with the State Bar. Respondent's misconduct is subject to two aggravating circumstances, as opposed to respondent Bach whose misconduct was subject to one aggravating circumstance.

Because respondent committed fewer acts of misconduct, is entitled to more mitigation credit but is also subject to more aggravating circumstances, respondent's misconduct warrants a lower level of discipline than the 30-day actual suspension imposed on respondent Bach.

A one-year stayed suspension is consistent with the Standards and applicable caselaw, and is appropriate taking into consideration the facts and circumstances of this case.

PENDING PROCEEDINGS.

The disclosure date referred to on page 2, paragraph A(7), was April 8, 2013.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 8, 2013, the prosecution costs in this matter are \$6,177.54. 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.

EXCLUSION FROM MCLE CREDIT

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

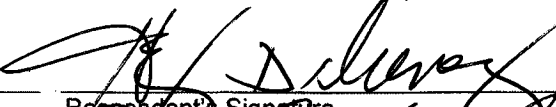
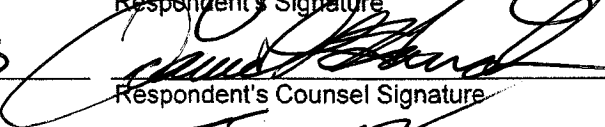

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In the Matter of:
HENRY DORAME NUNEZ
(SBN 63412)

Case number(s):
12-O-10570-PEM

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.

4/09/13		Henry Dorame Nunez
Date	Respondent's Signature	Print Name
4/9/13		Daniel Lee Harralson
Date	Respondent's Counsel Signature	Print Name
4/11/13		Heather E. Abelson
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:
HENRY DORAME NUNEZ (SBN 63412)

Case Number(s):
12-O-10570-PEM

STAYED SUSPENSION ORDER

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

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

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

April 22, 2013


LUCY ARMENDARIZ
Judge of the State Bar Court

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 22, 2013, I deposited a true copy of the following document(s):

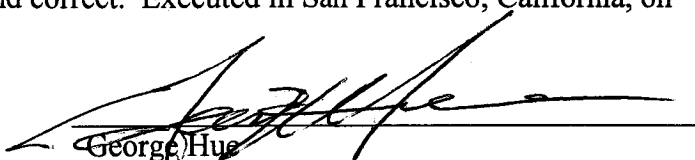
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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:
- DANIEL LEE HARRALSON
THE DANIEL HARRALSON LAW FIRM APC
PO BOX 26688
FRESNO, CA 93729 - 6688
- ☐ 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:

Heather Abelson, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 22, 2013.


George Hue
Case Administrator
State Bar Court