

ORIGINAL

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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		
<p>Counsel For The State Bar</p> <p>Diane J. Meyers Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1496</p> <p>Bar # 146643</p>	<p>Case Number(s): 12-O-12607-RAP</p>	<p>For Court use only</p> <p style="text-align: center;">FILED</p> <p style="text-align: center;">FEB 26 2013 <i>[Signature]</i></p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Daniel Marquez 1605 W. Olympic Blvd., Suite 515 Los Angeles, CA 90015 (213) 632-6111</p> <p>Bar # 107759</p>	PUBLIC MATTER	
<p>In the Matter of:</p> <p>David Andrew Luna</p> <p>Bar # 61953</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</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 December 20, 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 12 pages, not including the order.

(Effective January 1, 2011)

Stayed Suspension

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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: the two billing cycles immediately following the effective date of the Supreme Court's order in this matter. (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 Attachment to Stipulation at p. 9.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings. See Attachment to Stipulation at p. 9.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See Attachment to Stipulation at p. 9.
- (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.

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- (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 Attachment to Stipulation at p. 9.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of one 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 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.)

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:**
- Restitution: As a condition of probation, Respondent must pay restitution in the amount of \$7,500 (including the principal amount, plus interest of 10% per annum from May 2, 2011) to Chris Atkinson. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount, Respondent must also pay restitution to CSF in the amount paid, plus applicable interest and costs. Respondent must pay the restitution and provide satisfactory proof of payment to the Office of Probation no later than 90 days after the effective date of the discipline order.

Atkinson provided the requested information to Respondent. Thereafter, Atkinson made numerous status inquiries to Respondent by leaving telephone messages for Respondent.

6. Respondent did not respond to Atkinson's numerous status inquiries, did not contact Atkinson to discuss Respondent's strategy against the City, and did not inform Atkinson that nothing more could be done and that he would not be taking further action against the City on his behalf. Respondent did not make any contact with the City regarding Atkinson's investment.

7. Respondent's employment effectively terminated when he ceased work on Atkinson's matter during the summer of 2011. Respondent never provided any accounting for the \$7,500 advanced fee to Atkinson during the representation or after termination of his employment.

8. Respondent did not fully earn the \$7,500 advanced fee. Respondent did not refund any of the \$7,500 advanced fee to Atkinson.

9. In April 2012, the State Bar opened an investigation concerning a complaint received from Atkinson against Respondent in November 2011. On May 11, 2012, a State Bar investigator mailed a letter to Respondent at his membership records address regarding its investigation of the complaint. Respondent received the letter. In the letter, the State Bar requested a written response to the allegations raised by the complaint by May 25, 2012, including a detailed explanation of all services performed for Atkinson and an accounting.

10. On May 25, 2012, Respondent faxed to the State Bar investigator a written request for a 15-day extension to respond to the investigator's letter of May 11, 2012.

11. On May 25, 2012, the State Bar investigator called Respondent and left him a message that his request for an extension was granted, that his response to the investigator's letter was due by June 8, 2012, and that Respondent should send a letter confirming the extension. Respondent did not send a letter to the investigator to confirm the extension to June 8, 2012. Respondent did not provide a written response to the complaint.

12. On June 18, 2012, Respondent faxed to the State Bar investigator another written request for a seven-day extension to respond to the investigator's letter of May 11, 2012. Respondent indicated in the letter that he would deliver his written response to the investigator's letter of May 11, 2012 by June 25, 2012. The State Bar did not grant the extension requested by Respondent. Respondent did not provide a written response to the complaint by June 25, 2012 or thereafter or otherwise contact the investigator or cooperate in the State Bar's investigation of Atkinson's complaint.

CONCLUSIONS OF LAW

13. By not responding to Atkinson's numerous status inquiries, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent has agreed to provide legal services, in wilful violation of Business and Professions Code section 6068(m).

14. By not contacting the City regarding Atkinson's investment, by not contacting Atkinson to discuss Respondent's strategy against the City and by ceasing work on Atkinson's matter without informing Atkinson, Respondent failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

15. By not providing any accounting to Atkinson for the \$7,500 advanced fee, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

16. By not refunding any of the \$7,500 advanced fee to Atkinson, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

17. By not providing a written response to the investigator's letter of May 11, 2012, and by not otherwise contacting the investigator or cooperating in the State Bar's investigation of Atkinson's complaint, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent, in wilful violation of Business and Professions Code section 6068(i).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Harm: Respondent's client suffered significant harm as he was deprived of the \$7,500 in fees paid to Respondent.

Lack of Cooperation: Respondent displayed a lack of cooperation with the State Bar by failing to participate in a court-ordered settlement conference and by failing to timely submit a pre-trial settlement conference statement as ordered by the State Bar Court in this matter. (Standard 1.2(b)(vi).)

Multiple/Pattern of Misconduct: Respondent's misconduct includes violations of sections 6068(i) and 6068(m) of the Business and Professions Code and rules 3-110(A), 3-700(D)(2) and 4-100(B)(3) of the Rules of Professional Conduct. (Standard 1.2(b)(ii).)

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

Respondent was admitted to the State Bar on December 20, 1974 and has no prior record of discipline. Respondent's lack of prior discipline in over 36 years of practice before the misconduct occurred is entitled to significant weight in mitigation. (Standard 1.2(e)(1); *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113, 127 [an attorney with 30 years of practice and no prior discipline was entitled to significant mitigation].) Respondent has stipulated to misconduct and thereby demonstrated his recognition of wrongdoing and cooperation with the State Bar and saved the State Bar's resources. (Standard 1.2(e)(v); *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50.)

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.)

Respondent admits to committing five 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.

Although standard 2.2(b) calls for a minimum three-month actual suspension for a violation of rule 4-100 of the Rules of Professional Conduct, Respondent’s misconduct involves a failure to account for advanced fees rather than trust funds. (See *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, where the Review Department concluded that the duty to account under Rules of Professional Conduct, rule 4-100(B)(3), included a duty to account for advanced fees.) Standard 2.2 was adopted prior to the *Fonte* decision and was intended to apply to violations involving entrusted funds rather than advanced fees. Therefore, standard 2.2(b) is not the most appropriate standard in this case.

The most severe sanction applicable to Respondent’s misconduct is found in standard 2.6, which applies to Respondent’s violation of Business and Professions Code section 6068(i). Standard 2.6 provides that culpability of a member of a violation of Business and Professions Code section 6068(i) shall result in disbarment or suspension depending on 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. Also applicable is standard 2.4(b) which provides that culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully 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.

The gravamen of Respondent’s misconduct was his not responding to his client’s numerous status inquiries, not contacting his client to discuss Respondent’s strategy against the City, and not informing his client that nothing more could be done and that he would not be taking further action against the City on his behalf. Respondent also failed to provide an accounting or refund of unearned fees to his client once his employment ended and failed to cooperate with the State Bar. There was no significant harm to the State Bar by his failure to cooperate during the investigation. Respondent’s client suffered significant harm as he was deprived of the \$7,500 in fees paid to Respondent. Given Respondent’s lack of prior discipline and the lack of significant harm present, an actual suspension is not required to meet the goals of discipline. The net effect of the mitigating factors present, including Respondent’s many years in practice without prior discipline and his cooperation with the State Bar in reaching this Stipulation, outweigh the aggravating factors of Respondent’s multiple acts of misconduct and his failure to participate in a court-ordered settlement conference and failure to timely submit a pre-

trial settlement conference statement as ordered by the court. Therefore, a one-year stayed suspension is consistent with standard 2.6 and would serve the purposes of standard 1.3.

This disposition is consistent with cases involving an attorney's failure to perform and communicate in a single client matter and failure to cooperate during the disciplinary proceedings. (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921 [six months stayed suspension] and *Colangelo v. State Bar* (1991) 53 Cal.3d 1255 [one year stayed suspension].) This case also involved a failure to account and refund an unearned fee in a single client matter and is thus consistent with Supreme Court case law involving a failure to account and/or refund unearned fees in multiple matters. (*Matthew v. State Bar* (1989) 49 Cal.3d 784 [60-days actual suspension for failing to account for and/or refund unearned fees in three matters and failing to and failing to perform services diligently in two of the matters; no prior record of discipline].)

PENDING PROCEEDINGS.

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

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of January 31, 2013, the prosecution costs in this matter are \$6,944. 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

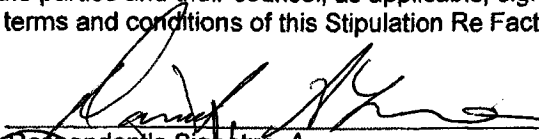
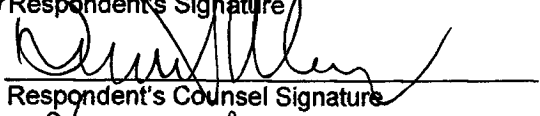
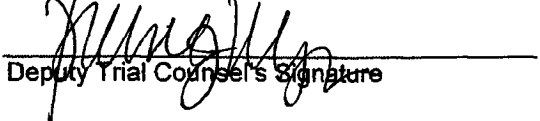
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School and/or any other educational course(s) to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: David Andrew Luna	Case number(s): 12-O-12607-RAP
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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>2-11-13</u> Date	 Respondent's Signature	<u>David A. Luna</u> Print Name
<u>2-11-13</u> Date	 Respondent's Counsel Signature	<u>Daniel Marquez</u> Print Name
<u>2-11-13</u> Date	 Deputy Trial Counsel's Signature	<u>Diane J. Meyers</u> Print Name

(Do not write above this line.)

In the Matter of: David Andrew Luna	Case Number(s): 12-O-12607
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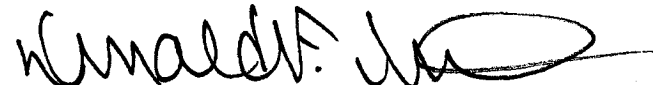
STAYED SUSPENSION ORDER

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.

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.)**

2/22/13
Date


DONALD F. MILES
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 Los Angeles, on February 26, 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 Los Angeles, California, addressed as follows:

DANIEL MARQUEZ
LAW OFC DANIEL MARQUEZ
1605 W OLYMPIC BLVD STE 515
LOS ANGELES, CA 90015

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

Diane J. Meyers, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 26, 2013.



Angela Carpenter
Case Administrator
State Bar Court