

PUBLIC MATTER

FILED

DEC 21 2012

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR OF CALIFORNIA
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STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of:) Case Nos. 12-O-13517, 12-O-14633
PETER DAVID NITSCHKE,) NOTICE OF DISCIPLINARY CHARGES
No. 174123,)
A Member of the State Bar.)

NOTICE - FAILURE TO RESPOND!

**IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT
THE STATE BAR COURT TRIAL:**

- (1) YOUR DEFAULT WILL BE ENTERED;**
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU
WILL NOT BE PERMITTED TO PRACTICE LAW;**
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
AND THE DEFAULT IS SET ASIDE, AND;**
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

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1 The State Bar of California alleges:

2 JURISDICTION

3 1. Peter David Nitschke ("Respondent") was admitted to the practice of law in the State
4 of California on December 13, 1994, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 12-O-13517
8 Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

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10 2. Respondent willfully violated Rules of Professional Conduct, rule 3-110(A), by
11 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as
12 follows:

13 3. On or about August 23, 2011, the home of Nathan Washington ("Washington") was
14 sold in a foreclosure sale.

15 4. On or about August 28, 2011, Washington employed Respondent to assist him in
16 connection with rescinding the foreclosure sale, including filing a lawsuit to rescind the sale.

17 5. On or about August 29, 2011, Washington paid Respondent \$2,500.00 in advanced
18 fees.

19 6. On or about August 29, 2011, Respondent faxed a letter to Marvin Ballenger, at
20 Griffin Residential, regarding setting aside the August 23, 2011 sale of Washington's home.
21 Respondent failed to follow up with Ballenger or Griffin Residential, and made no further efforts
22 to contact Ballenger or Griffin Residential on Washington's behalf.

23 7. On or about August 29, 2011, Respondent faxed a letter to Quality Loan Service
24 Corporation ("QLS") regarding setting aside the August 23, 2011 sale of Washington's home.
25 Respondent failed to follow up with QLS, and made no further efforts to contact QLS on
26 Washington's behalf.

27 8. Thereafter, Washington contacted Respondent by phone and requested an update on
28 the status of his case. Washington and Respondent had a phone conversation in which

1 Respondent represented to Washington that he had filed a lawsuit on Washington's behalf
2 against the company that had purchased Washington's home, and informed Washington that his
3 case number was Los Angeles Superior Court ("LASC") case no. PC025814.

4 9. When Respondent represented to Washington that he had filed a lawsuit on
5 Washington's behalf, Respondent knew or was grossly negligent in not knowing that he had not
6 filed a lawsuit on Washington's behalf, and that LASC case no. PC025814 did not pertain to
7 Washington's legal matter.

8 10. Through his own research, Washington discovered that LASC case no. PC025814
9 was for a different case, entitled *Bank of America v. Tien Shui Liu, et al.*

10 11. Thereafter, Washington informed Respondent that LASC case no. PC025814 was not
11 the correct number for Washington's case. Respondent provided Washington with a second case
12 number. Since Respondent had not filed a lawsuit on behalf of Washington, Respondent knew
13 or was grossly negligent in not knowing that the second case number was false.

14 12. On or about August 31, 2011, GW San Diego Properties, LLC, filed a notice of
15 unlawful detainer against Washington (the "unlawful detainer action").

16 13. In or about September 2011, Washington contacted Respondent regarding filing a
17 response, and Respondent demanded additional advanced fees to represent Washington in the
18 unlawful detainer action. Washington did not retain Respondent to represent him in the unlawful
19 detainer action.

20 14. Thereafter, Washington determined that the second case number provided by
21 Respondent was not the correct number for Washington's case. Washington called Respondent
22 by phone and left multiple voice messages regarding the false case number, and requesting status
23 updates for his case. Respondent received the messages, but failed to respond to Washington.

24 15. Washington went to Respondent's office to confront him, and learned that
25 Respondent had vacated his office without notice to Washington. Respondent failed to respond
26 to Washington at any time thereafter.

27 16. Respondent failed to inform Washington that he had vacated his office.
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1 17. Respondent failed to assist Washington in rescinding the foreclosure sale, failed to
2 file a lawsuit on behalf of Washington and failed to perform any services of value for
3 Washington.

4 18. By failing to assist Washington in rescinding the foreclosure sale, failing to file a
5 lawsuit on behalf of Washington and failing to perform any service of value for Washington,
6 Respondent intentionally, recklessly, or repeatedly failed to perform legal services with
7 competence.

8 COUNT TWO

9 Case No. 12-O-13517
10 Rules of Professional Conduct, rule 3-700(A)(2)
[Improper Withdrawal from Employment]

11 19. Respondent willfully violated Rules of Professional Conduct, rule 3-700(A)(2), by
12 failing, upon termination of employment, to take reasonable steps to avoid reasonably
13 foreseeable prejudice to his client, as follows:

14 20. The factual allegations of Count One are incorporated by reference.

15 21. By failing to file the lawsuit for which he was hired, failing to respond to
16 Washington's voice messages regarding the status of his case and the false case numbers, and
17 vacating his office without providing notice to Washington, Respondent constructively
18 terminated his employment with Washington. Respondent did not inform Washington of his
19 intent to withdraw from representation or take any other steps to avoid reasonably foreseeable
20 prejudice to Washington.

21 22. By withdrawing from representation without providing any notice to Washington,
22 Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably
23 foreseeable prejudice to his client.

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COUNT THREE

Case No. 12-O-13517
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

23. Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2), by failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

24. The factual allegations of Counts One and Two are incorporated by reference.

25. Respondent did not earn any portion of the \$2,500.00 in advanced fees paid by Washington.

26. To date, Respondent has failed to refund any portion of the \$2,500.00 in unearned advanced fees paid by Washington.

27. By failing to refund any portion of the \$2,500.00 in unearned advanced fees paid by Washington, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned.

COUNT FOUR

Case No. 12-O-13517
Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

28. Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3), by failing to render appropriate accounts to a client regarding all funds coming into Respondent's possession, as follows:

29. The factual allegations of Counts One through Three are incorporated by reference.

30. To date, Respondent has failed to provide Washington with an accounting for the \$2,500 in fees Washington advanced to him.

31. By failing to provide Washington with an accounting for the \$2,500.00 in fees Washington advanced to Respondent, at any time between August 29, 2011, and the present, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession.

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COUNT FIVE

Case No. 12-O-13517
Business and Professions Code, section 6068(m)
[Failure to Respond to Client Inquiries]

32. Respondent willfully violated Business and Professions Code, section 6068(m), by failing to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services, as follows:

33. The factual allegations of Counts One through Four are incorporated by reference.

34. By failing to respond to Washington's phone messages regarding the status of his case and the false case numbers Respondent had provided to Washington, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services.

COUNT SIX

Case No. 12-O-13517
Business and Professions Code, section 6106
[Moral Turpitude – Misrepresentation to Client]

35. Respondent willfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:

36. The factual allegations of Counts One through Five are incorporated by reference.

37. By misrepresenting to Washington that Respondent had filed a lawsuit against the company that had purchased Washington's home, and providing Washington with two false case numbers, Respondent committed an act involving moral turpitude, dishonesty or corruption.

COUNT SEVEN

Case No. 12-O-14633
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

38. Respondent willfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

39. On or about May 10, 2010, Clara Jane Clayton passed away.

1 40. Clara Jane Clayton had left her estate to her two daughters, Diane Clayton ("Diane")
2 and Virginia Cottle ("Virginia").

3 41. On or about July 10, 2010, Diane and Bob and Virginia Cottle (collectively, the
4 "Claytons"), employed Respondent to file probate in the San Diego Superior Court for the estate
5 of Clara Jane Clayton. The Claytons hired Respondent because he was a family friend and a
6 fellow congregation member at the Claytons' church.

7 42. On or about July 12, 2010, the Claytons gave Respondent the cash from Clara Jane
8 Clayton's estate to hold in his client trust account, in three separate checks totaling \$677,780.73.

9 43. On or about July 12, 2010, Respondent deposited the checks into his client trust
10 account at JP Morgan Chase Bank, account no. xxxxx2968 ("CTA").¹

11 44. Between on or about July 12, 2010, and in or about mid-2011, Respondent assured
12 the Claytons that the probate case was proceeding successfully.

13 45. In or about late 2011, Diane made repeated efforts to contact Respondent by phone
14 regarding the probate case. Respondent received Diane's voice mail messages, but failed to
15 return her calls.

16 46. On or about April 10, 2012, Allison Broderick ("Broderick"), the daughter of Diane
17 Clayton, sent Respondent a text message asking when the Claytons could expect to hear from the
18 San Diego court concerning the probate case. On or about April 13, 2012, Respondent replied to
19 Broderick's text message, stating that he had appeared in court on the probate case the day
20 before, and the judge had advised he would issue a decision in the next few days.

21 47. Respondent never filed any probate case in connection with the estate of Clara Jane
22 Clayton.

23 48. On or about April 30, 2012, Broderick sent Respondent a text message requesting the
24 case number for the probate case. On or about May 2, 2012, Respondent replied to Broderick's
25 text message, stating that he would provide the case number the following Friday.

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¹ The complete account number is omitted due to privacy concerns.

1 49. On or about May 8, 2012, and May 9, 2012, Broderick sent Respondent multiple text
2 messages repeating her request for information about the probate case, and advising Respondent
3 that there was no record of Clara Jane Clayton's probate case in the San Diego Superior Court.
4 On or about May 9, 2012, Respondent replied to Broderick's text messages, stating he would
5 provide Broderick with "everything" that same day.

6 50. On or about May 9, 2012, Broderick spoke with attorney Rick Needham
7 ("Needham") regarding Respondent's failure to provide information about the probate matter.
8 On or about May 9, 2012, Needham contacted Respondent by phone and told him to either
9 resolve the probate matter or turn over the case to another attorney.

10 51. On or about May 9, 2012, Respondent sent the Claytons an email stating that by the
11 end of that week he would provide the Claytons with documents to sign, which Respondent
12 would file in court in connection with the probate matter, and stating that the Claytons' funds
13 remained in the CTA. Attached to the email, Respondent provided the Claytons with a
14 fabricated CommerceWest Bank statement for trust account number xxx0075², which
15 misrepresented to Clayton that as of April 30, 2012, client trust account number xxx0075
16 contained a total of \$733,460.23 in funds.

17 52. On or about May 16, 2012, Respondent sent Needham an email admitting that he
18 never filed the probate case. Respondent stated he would transfer the funds held in the CTA to
19 another account as provided by Needham.

20 53. On or about May 16, 2012, Needham sent Respondent an email demanding that
21 Respondent transfer the funds into the Claytons' Comerica account, and immediately deliver the
22 file. Respondent received Needham's email, but failed to respond, and failed to return any
23 funds.

24 54. On or about May 17, 2012, Respondent returned the case file to Needham.

25 55. Respondent failed to perform any services of value for the Claytons.

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28 ² The complete account number is omitted due to privacy concerns.

56. By failing to file the probate case for which he was hired, and failing to perform any services of value for the Claytons, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

COUNT EIGHT

Case No. 12-O-14633
Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

57. Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3), by failing to render appropriate accounts to a client regarding all funds coming into Respondent's possession, as follows:

58. The factual allegations of Count Seven are incorporated by reference.

59. Respondent was required to hold \$677,780.73 in trust for the Claytons, in connection with the probate matter.

60. To date, Respondent has failed to provide the Claytons with an accounting for the \$677,780.73 in funds in connection with the probate matter.

61. By failing to provide the Claytons with an accounting for the \$677,780.73 in funds that Respondent held in trust for the Claytons in connection with the probate matter, at any time between July 12, 2010, and the present, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession.

COUNT NINE

Case No. 12-O-14633
Rules of Professional Conduct, rule 4-100(B)(4)
[Failure to Pay Client Funds Promptly]

62. Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(4), by failing to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive, as follows:

63. The factual allegations of Counts Seven and Eight are incorporated by reference.

64. To date, Respondent has failed to return to the Claytons any portion of the \$677,780.73 that Respondent was required to maintain in his CTA.

65. By failing to return the \$677,780.73 in client funds which Respondent was required to maintain in his CTA in connection with the probate matter, Respondent, failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive.

COUNT TEN

Case No. 12-O-14633
Rules of Professional Conduct, rule 4-100(A)
[Failure to Maintain Client Funds in Trust Account]

66. Respondent willfully violated Rules of Professional Conduct, rule 4-100(A), by failing to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, as follows:

67. The factual allegations of Counts Seven through Nine are incorporated by reference.

68. At all times, Respondent was required to maintain the sum of \$677,780.73 in the CTA, on behalf of the Claytons.

69. Following the July 12, 2010 deposit of the Claytons' funds, the balance in the CTA fell below the sum of \$677,780.73 which Respondent was required to maintain on behalf of the Claytons.

70. On or about July 30, 2010, the balance in the CTA fell to approximately \$192,725.32. On or about August 31, 2010, the balance in the CTA fell to approximately \$2,725.32. On or about September 7, 2010, the balance in the CTA fell to \$0.00.

71. Respondent failed to maintain at least \$677,780.73 in his CTA on behalf of the Claytons.

72. By failing to maintain at least \$677,780.73 on behalf of the Claytons in his CTA, Respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import.

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COUNT ELEVEN

Case No. 12-O-14633
Business and Professions Code, section 6106
[Moral Turpitude - Misappropriation]

73. Respondent willfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:

74. The factual allegations of Counts Seven through Ten are incorporated by reference.

75. Respondent dishonestly or with gross negligence misappropriated at least \$677,780.73 in funds that he was required to maintain in his CTA, on behalf of Clayton, in connection with the probate matter.

76. By misappropriating at least \$677,780.73 in funds that Respondent was required to maintain for Clayton in the CTA in connection with the probate matter, Respondent committed an act involving moral turpitude, dishonesty or corruption.

COUNT TWELVE

Case No. 12-O-14633
Business and Professions Code, section 6106
[Moral Turpitude – Misrepresentation to Client]

77. Respondent willfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:

78. The factual allegations of Counts Seven through Eleven are incorporated by reference.

79. By misrepresenting to the Claytons and Broderick that Respondent had filed the probate case for which he was hired, providing a fabricated bank statement to the Claytons and misrepresenting to the Claytons and Broderick that Respondent maintained \$677,780.73 in estate funds in his CTA, Respondent committed an act involving moral turpitude, dishonesty or corruption.

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DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): **12-O-13517; 12-O-14633**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

☐

By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.

☒

By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))

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By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').

☐

By Fax Transmission: (CCP §§ 1013(e) and 1013(f))

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

☐

By Electronic Service: (CCP § 1010.6)

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)

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(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,

Article No.: 7196 9008 9111 0442 9126

at Los Angeles, addressed to: (see below)

☐

(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,

Tracking No.: addressed to: (see below)

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
Peter David Nitschke	260 Newport Center Dr., Ste. 100 Newport Beach, CA 92660	Electronic Address	Via Regular USPS: Peter David Nitschke #2721355 501 City Drive South Orange, CA 92868

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via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

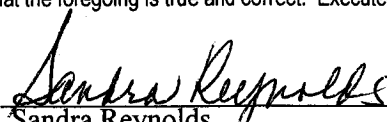
I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

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

DATED: December 21, 2012

SIGNED:


Sandra Reynolds
Declarant

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 12-O-13517; 12-O-14633

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

☐

By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.

☒

By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))

☐

By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ("UPS").

☐

By Fax Transmission: (CCP §§ 1013(e) and 1013(f))

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

☐

By Electronic Service: (CCP § 1010.6)

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*

☒

(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,

Article No.: 7196 9008 9111 0442 9133 at Los Angeles, addressed to: *(see below)*

☐

(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,

Tracking No.: addressed to: *(see below)*

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
Peter David Nitschke	Peter David Nitschke #2721355 501 City Drive South Orange, CA 92868	Electronic Address	

☐ via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

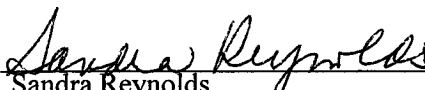
I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ("UPS"). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

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

DATED: December 21, 2012

SIGNED:


Sandra Reynolds
Declarant