

ORIGINAL

**State Bar Court of California  
Hearing Department  
Los Angeles  
STAYED SUSPENSION**

|  |  |   |
|--|--|---|
| <b>Counsel For The State Bar</b><br><br>Maria L. Ghobadi<br>Deputy Trial Counsel<br>1149 South Hill Street<br>Los Angeles, California 90015<br>(213) 765-1165<br><br>Bar # 242945      | <b>Case Number(s):</b><br>12-O-16252-<br>13-O-11597 (inv)  | <b>For Court use only</b><br><br><b>PUBLIC MATTER</b><br><br><b>FILED</b><br><b>AUG 15 2013</b><br>STATE BAR COURT<br>CLERK'S OFFICE<br>LOS ANGELES |
| <b>Counsel For Respondent</b><br><br>David C. Carr<br>Law Office of David Cameron Carr<br>PLC<br>530 B Street, Suite 1410<br>San Diego, CA 92101<br>(619) 696-0526<br><br>Bar # 124510 | <b>Submitted to: Settlement Judge</b><br><br>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND<br>DISPOSITION AND ORDER APPROVING<br><br><b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b><br><br><input type="checkbox"/> PREVIOUS STIPULATION REJECTED |   |
| <b>In the Matter of:</b><br><b>JOANNA TOOKER VOGEL</b><br><br>Bar # 158495<br><br>A Member of the State Bar of California<br>(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 June 9, 1992.
- (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.



(Do not write above this line.)

- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 12 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (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.

(Do not write above this line.)

- (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 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 attachment to stipulation re facts, conclusions of law and disposition at page 8.

## 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.

(Do not write above this line.)

- (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: JOANNA TOOKER VOGEL

CASE NUMBERS: 12-O-16252, 13-O-11597

**FACTS AND CONCLUSIONS OF LAW**

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 12-0-16252 (Complainant: Carolyn Blevins)

**FACTS:**

1. On February 13, 2011, Carolyn Blevins hired Respondent to represent her in obtaining guardianship of Blevins' minor grandchild. Respondent knew that time was of the essence.
2. On April 7, 2011, Blevins provided Respondent with all the necessary information to file a petition for guardianship on behalf of Blevins.
3. Respondent did not file the petition for guardianship on behalf of Blevins until July 13, 2011.
4. After April 7, 2011, Blevins telephoned Respondent multiple times and left detailed messages requesting that Respondent provide a status report on Blevins' legal matter.
5. Despite Respondent's receipt of the multiple messages from Blevins, Respondent did not return any of Blevins' telephone calls, and did not otherwise provide a status report to Blevins.
6. After July 13, 2011, Blevins terminated Respondent's services and requested all unearned money be returned. Blevins did not receive a final accounting until July 22, 2013, while disciplinary charges were pending.

**CONCLUSIONS OF LAW:**

7. By not filing the Blevins petition for guardianship until July 13, 2011, four months after Respondent received all necessary information and knowing that time was of the essence, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rule of Professional Conduct 3-110(A).
8. By failing to respond to Blevins' multiple telephone messages requesting a status report from April 7, 2011, to July 13, 2011, Respondent willfully failed to respond promptly to reasonable status inquires of a client in violation of Business and Professions Code section 6068(m).
9. By failing to provide a final accounting to Blevins until July 22, 2013, Respondent willfully failed to render an appropriate accounting to a client in violation of Rule of Professional Conduct 4-100(B)(3).

**FACTS:**

10. On July 3, 2012, Elizabeth Zuber hired Respondent to represent her in marital dissolution matter.

11. From November 21, 2012, to January 12, 2013, Zuber left multiple telephone messages requesting a status report regarding an upcoming hearing scheduled for February 4, 2013.

12. Despite Respondent's receipt of the multiple messages from Zuber, Respondent did not return any of Zuber's telephone calls, and did not otherwise provide a status report to Zuber during this time.

13. Zuber was forced to terminate the relationship with Respondent and hire new counsel due to Respondent's failure to communicate and the pending hearing scheduled for February 4, 2013.

**CONCLUSIONS OF LAW:**

14. By failing to respond to Zuber's multiple telephone messages requesting a status report from November 21, 2012, to January 12, 2013, Respondent willfully failed to respond promptly to reasonable status inquires of a client in violation of Business and Professions Code section 6068(m).

**ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES**

**No Prior Discipline:** Prior to the onset of misconduct in 2011, Respondent had practiced law for 21 years without any discipline. (See *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49 [An attorney is entitled to some weight in mitigation for lack of discipline over many years of practice notwithstanding that the misconduct was serious].)

**Emotional/Physical Difficulties:** Respondent has suffered from chronic depression for years without incident. However, the recent death of her mother triggered a bout of depression. Now under the care of a psychiatrist, Respondent has responded positively to both cognitive therapy and medication. Respondent's treating psychiatrist states that Respondent was experiencing extreme depression during her representation of Blevins and Zuber, and that her misconduct during that time was attributable to her depression. (See *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr 552, 560-561 [Attorney was given mitigation for difficulties and disabilities in the absence of complete rehabilitation. The court found that the steady progress towards rehabilitation was sufficient].)

**Pretrial Stipulation:** Respondent has entered into this pretrial stipulation with the State Bar of California Office of the Chief Trial Counsel. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [Mitigating credit was given for entering into a stipulation as to facts and culpability].)

**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.)

Respondent admits to committing three 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.

The most severe sanction applicable to Respondent’s misconduct is found in standard 2.2(b), which provides that culpability of a member of a willful violation of Rule of Professional Conduct 4-100(B)(3), shall result in at least a three month actual suspension from the practice of law.

In this case, the violation of rule 4-100(B)(3) is a failure to account for unearned fees, not entrusted funds, which standard 2.2(b) was intended to address. Standard 2.2(b) was adopted prior to the decision in which the court determined that the duty to account set forth in 4-100 applied to advanced fees. (*In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757.) Therefore, a consideration of mitigating and aggravating factors may warrant a deviation from that standard.

In the present case, Respondent committed misconduct in two client matters. In the Blevins matter, Respondent failed to provide status reports to her client from April 7, 2011, to July 13, 2011, despite repeated requests for information about her case and delayed filing the guardianship petition with the court for four months. Further, Respondent did not send a final accounting to Blevins until July 22, 2013. Likewise, in the Zuber matter, Respondent failed to respond to Zuber’s inquiries about the status of her legal matter from November 21, 2012, to January 12, 2013. Zuber eventually was forced to retain new counsel, and as a result, her dissolution matter has been delayed.

Both Blevins and Zuber suffered minor harmed by Respondent’s misconduct. Blevins suffered undue hardship as she was unable to assume immediate guardianship of her granddaughter due to the delay in the filing of the petition and did not receive a final accounting for two years. Due to her inability to communicate with Respondent, Zuber was forced to hire new counsel in the middle of her dissolution proceeding which resulted in a delay in her legal matter.

Respondent has been a practicing attorney for 21 years with no prior record of discipline. During the period of misconduct, Respondent was suffering from severe depression due to the recent death of her mother. Now under the care of a psychiatrist, Respondent shows signs of continuing improvement. Respondent has also agreed to enter into a pretrial stipulation with the Office of Chief Trial Counsel.

Therefore, in consideration of the surrounding circumstances, the purposes of attorney discipline will be served by the imposition of a one year stayed suspension, one year of probation and no actual suspension.

## **DISMISSALS.**

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

| <u>Case No.</u> | <u>Count</u> | <u>Alleged Violation</u>                      |
|-----------------|--------------|---|
| 12-O-16252      | Count Two    | Rule of Professional Conduct 3-700(D)(2)      |
| 12-O-16252      | Count Four   | Business and Professions Code section 6104    |
| 12-O-16252      | Count Six    | Business and Professions Code section 6068(i) |

## **COSTS OF DISCIPLINARY PROCEEDINGS**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 31, 2013, the prosecution costs in these matter are approximately \$5,458.00. 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.)

(Do not write above this line.)

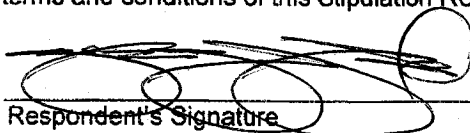
|  |  |
|--|--|
| In the Matter of:<br>JOANNA TOOKER VOGEL | Case number(s):<br>12-O-106252, 13-O-11597 |
|--|--|

### 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.

8-03-13

Date



Respondent's Signature

Joanna T. Vogel

Print Name

Date

Respondent's Counsel Signature

David C. Carr

Print Name

Date

Deputy Trial Counsel's Signature

Maria L. Ghobadi

Print Name

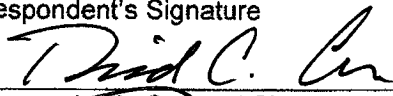
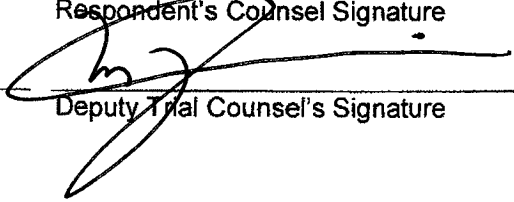
(Do not write above this line.)

In the Matter of:  
JOANNA TOOKER VOGEL

Case number(s):  
12-O-106252, 13-O-11597

### 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.

|          |   |                  |
|----------|---|------------------|
| Date     | Respondent's Signature  | Joanna T. Vogel  |
| 8/3/13   |  | Print Name       |
| Date     | Respondent's Counsel Signature  | David C. Carr    |
| 8/5/2013 |  | Print Name       |
| Date     | Deputy Trial Counsel's Signature  | Maria L. Ghobadi |
|          |   | Print Name       |

(Do not write above this line.)

|  |   |
|--|---|
| In the Matter of:<br>JOANNA TOOKER VOGEL | Case Number(s):<br>12-O-16252, 13-O-11597 |
|--|---|

### 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.)**

08-15-2013  
Date

  
RICHARD A. PLATEL  
Judge of the State Bar Court

RICHARD A. PLATEL

## 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 August 15, 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:

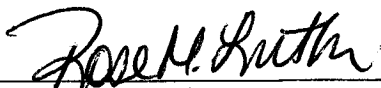
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID C. CARR  
LAW OFFICE OF DAVID CAMERON CARR PLC  
525 B ST STE 1500  
SAN DIEGO, CA 92101

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

MARIA GHOBADI, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 15, 2013.



---

Rose M. Luthi  
Case Administrator  
State Bar Court