

State Bar Court of California Hearing Department San Francisco DISBARMENT		
Counsel For The State Bar Sherrie B. McLetchie Senior Trial Counsel 180 Howard Street San Francisco CA 94105 (415) 538-2297 Bar # 85447	Case Number(s): 12-O-16301	For Court use only PUBLIC MATTER FILED 18 JUN 14 2013 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Jana L. Gill Porter Simon 40200 Truckee Airport Rd., Suite 1 Truckee CA 96161 Bar # 248948	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: JANA L. GILL Bar # 248948 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 June 1, 2007.
- (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 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 to be awarded to the State Bar.
- ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
- ☐ Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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**
- (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:
- (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" at page 9.
- (5) ☒ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. See "Facts Supporting Aggravating Circumstances" at page 9.

- (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" at page 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 \$ _____ 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.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(Do not write above this line.)

(13) ☒ No mitigating circumstances are involved.

Additional mitigating circumstances:

See "Additional Mitigating Circumstances" at page 9.

D. Discipline: **Disbarment.**

E. Additional Requirements:

- (1) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (2) ☐ **Restitution:** Respondent must make restitution to in the amount of \$ plus 10 percent interest per year from . If the Client Security Fund has reimbursed for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than days from the effective date of the Supreme Court order in this case.
- (3) ☐ **Other:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JANA L. GILL

CASE NUMBER(S): 12-O-16301

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-O-16301 (State Bar Investigation)

FACTS:

1. Beginning in April 2006, and continuing through February 2008, respondent served as trustee for the Nevis Family Trust. Lucille Nevis had been the original trustee of the Nevis Family Trust, became the primary beneficiary upon her husband's death on April 10, 2006, and thereafter removed herself as trustee of the Nevis Family Trust in favor of respondent.
2. During the time respondent served as trustee of the Nevis Family Trust, respondent disbursed without authorization, funds from a Nevis Family Trust Downey Savings Bank account, a MetLife Total Control account in the name of Lucille Nevis, and issued checks against a AAA credit card account in the name of Lucille Nevis, all of which as trustee respondent had access to and over which she had control. The unauthorized disbursements by respondent were to herself, to her husband, Walter Nevis, and to third parties for the benefit of respondent. Walter Nevis is the son of Lucille Nevis, and, along with his brother and sister, was a residual beneficiary of the Nevis Family Trust during the lifetime of Lucille Nevis.
3. Without authorization, respondent issued check number 101 drawn on a Nevis Family Trust Downey Savings Bank account in the amount of \$4,000, dated June 27, 2006, payable to herself which on June 28, 2006, was deposited in a Plumas Bank account jointly held by respondent and her husband, Walter Nevis ("the joint account").
4. Without authorization, respondent issued check number 104 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$3,000, dated July 10, 2006, payable to respondent which on July 11, 2006, was deposited in the joint account.
5. Without authorization, respondent issued check number 106 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$1,000, dated July 18, 2006, payable to respondent which on July 19, 2006, was deposited in the joint account.
6. Without authorization, respondent issued check number 107 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$4,000, dated July 21, 2006, payable to her husband, Walter Nevis, which on July 24, 2006, was deposited in the joint account.

7. Without authorization, respondent issued check number 108 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$4,000, dated July 24, 2006, payable to respondent which on July 25, 2006, was deposited in the joint account.
8. Without authorization, respondent issued check number 110 drawn on the Nevis Family Trust Downing Savings Bank account in the amount of \$353.81, dated August 24, 2006, payable to Tahoe Yoga Wellness. The check to Tahoe Yoga Wellness was for the benefit of respondent.
9. Without authorization, respondent issued check number 111 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$3,000, dated August 26, 2006, payable to respondent which on August 29, 2006, was deposited in the joint account.
10. Without authorization, respondent issued check number 112 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$2,000, dated September 8, 2006, payable to her which on September 11, 2006, was deposited in the joint account.
11. Without authorization, respondent issued check number 113 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$4,000, dated September 18, 2006, payable to her which on September 19, 2006, was deposited in the joint account.
12. Without authorization, respondent issued check number 118 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$5,000, dated September 25, 2006, payable to her husband, Walter Nevis, which on September 26, 2006, was deposited in the joint account.
13. Without authorization, respondent issued check number 125 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$5,000, dated October 2, 2006, payable to her which on October 3, 2006, was deposited in the joint account.
14. Without authorization, respondent issued check number 165 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$650, dated December 2, 2006, payable to her which on December 5, 2006, was deposited in the joint account.
15. Without authorization, respondent caused check number 0105, in the amount of \$2,970, dated May 22, 2007, to be issued from Lucille Nevis' MetLife Total Control Account, payable to respondent and used said funds for respondent's benefit.
16. Without authorization, respondent caused check number 1030, dated June 18, 2007, to be issued from Lucille Nevis' AAA credit card account in the amount of \$7,500 payable to respondent which was deposited in the joint account.
17. Without authorization, respondent caused check number 0106, in the amount of \$5,000, dated August 1, 2007, to be issued from Lucille Nevis' MetLife Total Control Account and used said funds for respondent's benefit.
18. Without authorization, respondent caused check 1040, in the amount of \$7,000, dated October 15, 2007, to be issued from Lucille Nevis' AAA credit card account payable to respondent which on October 16, 2007, was deposited in the joint account.

19. Without authorization, respondent issued check number 227 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$750, dated November 8, 2007, payable to her which on November 9, 2007, was deposited in the joint account.
20. Without authorization, respondent issued check number 229 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$500, dated November 9, 2007, payable to her which on November 13, 2007, was deposited in the joint account.
21. Without authorization, respondent issued check number 234 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$20,000, dated December 17, 2007, payable to her which on December 18, 2007, was deposited in the joint account.
22. Without authorization, respondent issued check number 237 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$5,000, dated January 4, 2008, payable to her husband, Walter Nevis, which on January 7, 2008, was deposited in the joint account.
23. Without authorization, respondent issued check number 239 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$250, dated January 24, 2008, payable to her which on January 25, 2008, was deposited in the joint account.
24. Without authorization, respondent issued check number 241 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$20,000, dated February 7, 2008, payable to her which on February 8, 2008, was deposited in the joint account.
25. Without authorization, respondent issued check number 244 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$1,781.21, dated February 15, 2008, payable to West Hills. The check to West Hills was for the benefit of respondent.
26. Without authorization, respondent issued check number 245 drawn on the Nevis Family Trust Downey Savings Bank account in the amount of \$15,000, dated February 22, 2008, payable to Michael's House Retreat. The check to Michael's House Retreat was for the benefit of respondent.
27. On August 10, 2010, respondent and her husband, Walter Nevis, signed a settlement agreement and mutual release with Kay Carrigan, successor trustee of the Nevis Family Trust, on behalf of the Nevis Family Trust, to pay \$95,000 in principal, plus some accrued interest, for a total of \$103,325 in monthly payments to the Nevis Family Trust over a period of 10 years as a compromise of the Nevis Family Trust's claim against respondent for misuse of trust funds and funds belonging to Lucille Nevis. The civil settlement did not include attorney's fees.
28. After making two payments of \$870.83 in late 2010 pursuant to the terms of the settlement, respondent ceased making monthly payments to the Nevis Family Trust.
29. On February 20, 2011, Lucille Nevis died. She was 80 years old at the time of her death.
30. On July 14, 2011, a civil judgment in the amount of \$101,566.74 was entered against respondent and her husband and in favor of the Nevis Family Trust.

31. In April 2013, approximately half of the remainder of the Nevis Family Trust corpus was distributed. Pursuant to the terms of the civil settlement and judgment, Walter Nevis waived his share as a beneficiary of the Nevis Family Trust to the extent necessary to offset the amount of the civil judgment against him and respondent.

CONCLUSION OF LAW:

32. By disbursing without authorization at least \$120,000 from the Nevis Family Trust Downey Savings Bank account, Lucille Nevis' MetLife account, and from Lucille Nevis' AAA credit card account during her life time for the use and benefit of respondent and her husband while respondent was trustee of the Nevis Family Trust, respondent misappropriated entrusted funds and committed acts of moral turpitude in violation of Business and Professions Code, section 6106.

ADDITIONAL MITIGATING CIRCUMSTANCES.

Pre-filing Stipulation: Respondent demonstrated cooperation with the State Bar by entering into this stipulation. *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50.

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.2(b)(iv)): Respondent caused significant harm to the Nevis Family Trust by misappropriating at least \$120,000. Respondent's misappropriation of entrusted funds was not offset by her husband's share of the distribution of the estate until April 2013, *and then only to the extent of the civil judgment*. No interest accrued on the balance of the settlement amount between December 2010 and April 2013.

In addition, in order to investigate respondent's misappropriation, negotiate a settlement with respondent and her husband, Walter Nevis, and thereafter, to reduce that settlement to a judgment, the Nevis Family Trust paid attorney fees of \$32,201.50, which fees were not recouped through the civil settlement. The \$32,201.50 does not include attorneys' fees for other legal services rendered to the successor trustee or the Nevis Family Trust.

Multiple Acts of Misconduct (Std. 1.2(b)(ii)): Respondent made multiple unauthorized withdrawals from the Nevis Family Trust Downey Savings Bank account, Lucille Nevis' MetLife account, and against Lucille Nevis' AAA credit card over a period of approximately 20 months.

Indifference (Std. 1.2(b)(v)): Respondent made only two payments totaling \$1,741.66 to the Nevis Family Trust in late 2010, despite the representation in the settlement agreement that both respondent and her husband could individually afford to pay the Trust the total settlement amount.

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.)

The sanction applicable to respondent’s misconduct is found in standard 2.2(a) which applies to respondent’s violation of Business and Professions Code section 6106.

Standard 2.2(a) provides “that culpability of a member of willful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances.”

Here, the amount of funds misappropriated was not small, nor does compelling mitigation or extraordinary circumstances predominate to deviate from the standard. The misappropriation was a series of acts of moral turpitude and dishonesty by respondent, especially in her role as a fiduciary/trustee. This case is aggravated by the significant harm to the trust and its beneficiaries because of the unrecovered attorneys’ fees and lost interest on the compromised settlement amount between approximately December 1, 2010, and March 31, 2013, the 23 separate instances of using the Trust’s money for her own purposes over a 20 month period, and respondent’s failure to comply with the compromise settlement agreement payments despite her representation that she and her husband could afford to do so. Therefore, there is no reason to deviate from the standard requiring disbarment.

Disbarment is also supported by case law. In *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, Conner was found culpable of obtaining interests adverse to a client, violating client trust account rules, failing to perform competently, failing to provide an accounting, failing to promptly return a client’s file, collecting an unconscionable fee, committing three acts of moral turpitude (including submitting fraudulent invoices, etc. to the State Bar), and intentional misappropriation of more than \$26,699.56. Conner had no prior discipline in his 12 years in practice; the Review Department gave him mitigating credit despite his serious misconduct, but nonetheless disbarred him. Like Conner, respondent misappropriated more than \$120,000 for her own personal use.

Disbarment in this matter is appropriate and is the only discipline consistent with the purposes of discipline set forth in standard 1.3.

PENDING PROCEEDINGS.

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

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of May 2, 2013, the prosecution costs in this matter are \$2,853.25. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

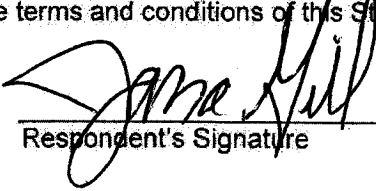
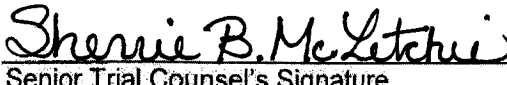
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In the Matter of: Jana L. Gill	Case number(s): 12-O-16301
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SIGNATURE OF THE PARTIES

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>5-9-2013</u> Date	 Respondent's Signature	<u>Jana L. Gill</u> Print Name
<u>May 28, 2013</u> Date	 Senior Trial Counsel's Signature	<u>Sherrie B. McLetchie</u> Print Name

(Do not write above this line.)

In the Matter of: Jana L. Gill	Case Number(s): 12-O-16301
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DISBARMENT 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.)**

Respondent Jana L. Gill is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Date

June 14, 2013

Judge of the State Bar Court

LUCY ARMENDARIZ

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 June 14, 2013, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER
APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

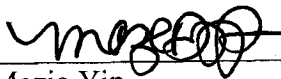
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JANA L. GILL
PORTER SIMON
40200 TRUCKEE AIRPORT RD STE 1
TRUCKEE, CA 96161

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

SHERRIE B. McLEITCHIE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 14, 2013.



Mazie Yip
Case Administrator
State Bar Court