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

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Tyrone A. Sandoval 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1336</p> <p>Bar # 286250</p>	<p>Case Number(s): 12-O-16596-RAP, 12-O-17476, 13-O-10385, 13-O-14797</p>	<p>For Court use only</p> <p>FILED</p> <p>JUN 24 2014 <i>P.B.</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>John W. Nelson 12437 Lewis St. Ste. 204 Garden Grove, CA 92840 (714) 703-7070</p> <p>Bar # 73958</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>	
<p>In the Matter of: DENIS ALEXANDER O'MAHONEY</p> <p>Bar # 77635</p> <p>A Member of the State Bar of California (Respondent)</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.

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A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 21, 1977**.
- (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.
- (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".

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- (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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. 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 or a separate attachment entitled "Prior Discipline."
- (2) **Dishonesty:** Respondent's misconduct was intentional, 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 at Page 8.**
- (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) **Restitution:** Respondent failed to make restitution.

(Effective January 1, 2014)

Stayed Suspension

(Do not write above this line.)

- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. 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, the public, or the administration of justice.
- (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 with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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 subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

(Do not write above this line.)

**No Prior Discipline. See Attachment at Page 8.
Pretrial Stipulation. See Attachment 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 1.2(c)(1), 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 (2) 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:**

<u>Case No.</u>	<u>Party</u>	<u>Amount</u>	<u>Jurisdiction</u>
12-O-16596	John Oral	\$2,898	Florida
12-O-17476	Julianne and Michael Jones	\$2,000	Washington
13-O-10385	Lisa and Kevin Collins	\$2,500	Massachusetts
13-O-14797	Joan and John Fischer	\$2,499	California
13-O-14797	Lucile Harvey	\$2,500	Massachusetts
13-O-14797	Samuel Jacobo	\$2,500	Arizona
13-O-14797	Judy and James Leach	\$3,400	Florida
13-O-14797	June and Neville Marshall	\$2,950	North Carolina
13-O-14797	Ida Montgomery	\$2,995	Nevada
13-O-14797	Dennis Reynolds	\$1,000	Arizona
13-O-14797	Cindy and Arthur Schott	\$1,500	New Jersey
13-O-14797	Kenneth Walker	\$2,499	California
Total:		\$29,241	

7. Respondent closed the bank accounts and Respondent's firms ceased operations in mid-July 2012.

8. On June 9, 2014, Respondent provided full refunds to the twelve parties listed in Paragraph 6, *supra*.

CONCLUSIONS OF LAW:

9. By failing to supervise the non-attorney staff between March 2012 and July 2012, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.5(f)): In these matters, Respondent's failure to supervise the non-attorney staff enabled the non-attorney staff to collect funds from parties who were financially distressed due to mortgage payments that they were either struggling to pay or were unable to pay. Respondent did not pay refunds to the parties until June 9, 2014. Accordingly, the parties were without their funds for a period of approximately two years. Respondent's misconduct caused significant harm to the public, which constitutes an aggravating circumstance. (Std 1.5(f).)

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent was admitted to the State Bar on December 21, 1977, and has no prior record of discipline. Although the misconduct is serious, Respondent is entitled to significant mitigation for his 36 years in practice without prior discipline. (*Friedman v. State Bar* (1990) 50 Cal. 3d 235, 245 [20 years of practice without prior discipline is "highly significant"].)

Pretrial Stipulation: Respondent has now acknowledged his misconduct and stipulated to facts, conclusions of law, and disposition in order to resolve his disciplinary proceedings as efficiently as possible, thereby avoiding the necessity of a trial and saving the State Bar Court time and resources.

(*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (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.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.5(b) provides that “[a]ctual suspension is appropriate for failing to perform legal services or properly communicate in multiple client matters, not demonstrating a pattern of misconduct.” (Std. 2.5(b) Here, Respondent admits to a single violation of Rules of professional Conduct, rule 3-110(A), for failing to supervise the non-attorney staff in multiple client matters and Standard 2.5(b) is the applicable standard.

Respondent’s failure to supervise the non-attorney staff enabled the non-attorney staff to collect funds from parties who were financially distressed due to mortgage payment that they were either struggling to pay or were unable to pay. While Respondent is not entitled to mitigation for making restitution after the initiation of disciplinary proceedings (See Std. 1.6(j)), it is important to note for purposes of determining the appropriate level of discipline that Respondent paid full refunds to the parties who paid funds to the non-attorney staff, as described in Paragraph 6, *supra*. However, such individuals were without their funds for approximately two years during a time in which they were financially distressed and Respondent’s failure to supervise the non-attorney staff thereby caused significant harm to the public. (Std. 1.5(f).)

In mitigation, Respondent has entered into a full stipulation which resolves this matter without the necessity of trial and has been a member of the State Bar of California for 36 years without prior discipline. Respondent’s many years of discipline-free practice affords him substantial mitigation.

While Respondent's misconduct is serious and aggravated, Respondent paid restitution to the individuals listed in Paragraph 6, *supra*, thereby limiting the harm to the public caused by Respondent's misconduct, and is afforded substantial mitigation for his 36 years in practice without prior discipline and is afforded mitigation for entering into a pretrial stipulation. Standard 1.7(c) provides that "if mitigating circumstances are found . . . and if the net effect demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a lesser sanction than what is otherwise specified in a given Standard." (Std. 1.7(c).) Here, Respondent's substantial mitigation outweighs the aggravating circumstances and a downward deviation from the level of discipline provided by Standard 2.5(b) is appropriate.

The level of discipline stipulated to herein is also supported by the case law. In *Dudugjian v. State Bar* (1991) 52 Cal.3d 1092, the Supreme Court determined that the placement of client funds in the attorney's general account and subsequent refusal to pay the funds to the client based on the honest but mistaken belief that money belonged to the firm, warranted a public reproof. In so deciding, the Supreme Court acknowledged that its discipline order deviated from former Standard 2.2(b), which, prescribed a minimum three-month actual suspension for commingling and failing to pay promptly, and ordered that the attorney pay restitution. (*Id.* at 1100.)

Respondent's misconduct is more serious than the attorney's misconduct in *Dudugjian*. The attorney in *Dudugjian* commingled client funds in his general account and failed to pay promptly \$5,356.94 of client funds in a single client matter. Respondent's failure to supervise the non-attorney staff caused greater harm to the public as evidenced by the greater number of individuals who lost the use of their funds. Accordingly, an increased level of discipline is warranted in this case.

Balancing all of the appropriate factors, a one-year stayed suspension and two-year term of probation subject to certain conditions, is appropriate, to protect the public, and will serve the purposes of attorney discipline set forth in Standard 1.1.

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-16596	One	Rules of Professional Conduct, rule 1-300(B)
12-O-16596	Two	Rules of Professional Conduct, rule 4-200(A)
12-O-17476	Three	Rules of Professional Conduct, rule 1-300(B)
12-O-17476	Four	Rules of Professional Conduct, rule 4-200(A)
13-O-10385	Five	Rules of Professional Conduct, rule 1-300(B)
13-O-10385	Six	Rules of Professional Conduct, rule 4-200(A)
13-O-14797	Seven	Business and Professions Code, section 6106.3
13-O-14797	Eight	Rules of Professional Conduct, rule 1-300(B)
13-O-14797	Nine	Rules of Professional Conduct, rule 4-200(A)
13-O-14797	Ten	Rules of Professional Conduct, rule 1-300(B)
13-O-14797	Eleven	Rules of Professional Conduct, rule 4-200(A)
13-O-14797	Twelve	Rules of Professional Conduct, rule 1-300(B)
13-O-14797	Thirteen	Rules of Professional Conduct, rule 4-200(A)
13-O-14797	Fourteen	Rules of Professional Conduct, rule 1-300(B)

13-O-14797	Fifteen	Rules of Professional Conduct, rule 4-200(A)
13-O-14797	Sixteen	Rules of Professional Conduct, rule 1-300(B)
13-O-14797	Seventeen	Rules of Professional Conduct, rule 4-200(A)
13-O-14797	Eighteen	Rules of Professional Conduct, rule 1-300(B)
13-O-14797	Nineteen	Rules of Professional Conduct, rule 4-200(A)
13-O-14797	Twenty	Rules of Professional Conduct, rule 1-300(B)
13-O-14797	Twenty-one	Rules of Professional Conduct, rule 4-200(A)
13-O-14797	Twenty-two	Business and Professions Code, section 6106.3
12-O-16596, et al.	Twenty-three	Rules of Professional Conduct, rule 1-300(A)
12-O-16596, et al.	Twenty-four	Business and Professions Code, section 6106
13-O-14797	Twenty-five	Business and Professions Code, section 6106
13-O-14797	Twenty-six	Business and Professions Code, section 6068(a)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of June 6, 2014, the prosecution costs in this matter are \$10,226.10. 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 and/or any other educational course(s) to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: DENIS ALEXANDER O'MAHONEY	Case number(s): 12-O-16596-RAP, 12-O-17476, 13-O-1385, 13-O-14797
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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>6-9-14</u> Date	 Respondent's Signature	<u>DENIS A. O'MAHONEY</u> Print Name
<u>6/9/2014</u> Date	 Respondent's Counsel Signature	<u>JOHN W. NELSON</u> Print Name
<u>6/9/2014</u> Date	 Deputy Trial Counsel's Signature	<u>TYRONE A. SANDOVAL</u> Print Name

(Do not write above this line.)

In the Matter of: DENIS ALEXANDER O'MAHONEY	Case Number(s): 12-O-16596-RAP, 12-O-17476, 13-O-1385, 13-O-14797
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STAYED SUSPENSION ORDER

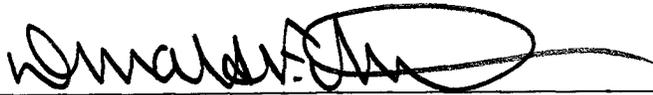
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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.)**

6/23/2014

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 June 24, 2014, 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:

**JOHN WILLIAM NELSON
WEISENBERG & NELSON, INC.
12437 LEWIS ST STE 204
GARDEN GROVE, CA 92840**

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

Tyrone A. Sandoval, Enforcement, Los Angeles

Terrie Goldade, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 24, 2014.



Paul Barona
Case Administrator
State Bar Court