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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION					
Suzan J. Anderson Senior Trial Counsel 180 Howard Street		PUBLIC MATTER			
San Francisco, California 94105 (415) 538-2209		FILED			
Bar # 160559		48 MAR - 5 2014			
In Pro Per Respondent		STATE BAR COURT CLERK'S OFFICE			
Katherine Melissa Townley 1350 Placer Street Redding, California 96001 (530) 246-8325		SAN FRANCISCO			
	Submitted to: Assigned Juc	lge			
Bar # 226566	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING				
In the Matter of: KATHERINE MELISSA TOWNLEY	ACTUAL SUSPENSION				
Bar # 226566	PREVIOUS STIPULATION REJECTED				
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 November 10, 2003.
- (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 11 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."

(Effective January 1, 2014)

1



Actual Suspension

- (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):
 - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: two billing cycles following the effective date of the Supreme Court order. (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) \square Prior record of discipline
 - (a) X State Bar Court case # of prior case 09-0-11000 [See Attachment at page 8].
 - (b) Date prior discipline effective October 6, 2012
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct, rules 3-110(A) failure to competently perform (4 counts); 3-310(F) accepting fees from a non-client without necessary waivers (1 count); 3-700(A)(2) improper withdrawal from employment (1 count); 3-700(D)(2) failure to refund unearned fees (1 count); 4-100(B)(3) failure to provide accounting (1 count); and Business and Professions Code sections 6068(i) failure to cooperate in State Bar Investigation (2 counts); 6068(m) failure to communicate (4 counts).
 - (d) Degree of prior discipline One year stayed suspension, two years' probation including 60 days actual suspension.
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (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.

(Effective January 1, 2014)

(Do not write above this line.)				
(4)	\boxtimes	Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice. See Stipulation 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)	\boxtimes	Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See Stipulation Attachment at page 8.		
(8)		Restitution: Respondent failed to make restitution.		
(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.

(Effective January 1, 2014)

(Do not write above this line.)				
(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 convincing proof of subsequent rehabilitation.		
(13)		No mitigating circumstances are involved.		

Additional mitigating circumstances:

Pretrial Stipulation: See Stipulation Attachment at page 8.

D. Discipline:

- (1) X Stayed Suspension:
 - (a) Respondent must be suspended from the practice of law for a period of two years.
 - i. \square 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:
 - (b) 🛛 The above-referenced suspension is stayed.
- (2) \boxtimes **Probation**:

Respondent must be placed on probation for a period of **three years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) \square Actual Suspension:

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of **six months**.
 - 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:

E. Additional Conditions of Probation:

(Effective January 1, 2014)

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) 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.
- (4) 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.
- (5) 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.

- (6) 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.
- (7) 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.
- (8) 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 Ethics School, and passage of the test given at the end of that session.
 - No Ethics School recommended. Reason: Respondent completed Ethics School on August 28, 2013 in Case no. 09-O-11000.
- (9) 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.
- (10) The following conditions are attached hereto and incorporated:

Substance Abuse Conditions	Law Office Management Conditions
Medical Conditions	Financial Conditions

(Effective January 1, 2014)

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 during the period of actual suspension or within one year, whichever period is longer. 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: **Respondent passed the MPRE on October 2, 2013 in Case no.** 09-O-11000.

- (2) 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.
- (3) Conditional Rule 9.20, California Rules of Court: If Respondent remains actually suspended for 90 days or more, he/she 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 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) Credit for Interim Suspension [conviction referral cases only]: Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions**:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:

KATHERINE MELISSA TOWNLEY

CASE NUMBER: 12-O-16835-PEM

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-16835 (Complainant: Lalayna Reeder)

FACTS:

1. On April 23, 2012, Lalanya Reeder ("Reeder") retained Respondent to represent her in a dissolution matter. On that same date, Reeder's parents paid Respondent \$2,500 in advanced legal fees. Reeder's parents orally authorized Reeder to make the payment as a charge on their credit card while Reeder was present in Respondent's office.

2. At no time did Respondent obtain Reeder's informed written consent to accept payment of advanced fees from Reeder's parents for Respondent's representation of Reeder in the dissolution matter.

3. On April 27, 2012, Reeder telephoned Respondent and left a message for Respondent to contact her regarding the status of her dissolution matter. Respondent received the message but failed to respond to Reeder.

4. On May 24, 2012, Reeder again telephoned Respondent and left a message for Respondent to contact her regarding the status of her dissolution matter. Respondent received the message but failed to respond to Reeder.

5. On June 7, 2012, Reeder sent a letter to Respondent terminating Respondent's legal services, requesting an accounting of all legal services rendered, and requesting a refund of any unearned fees. Respondent received the letter.

6. To date, Respondent has not provided an accounting to Reeder.

7. On July 16, 2012, Respondent received a written notification from Reeder's parent's credit card company that Reeder's parents were disputing their credit card payment of advanced legal fees and requesting Respondent's response.

8. On July 24, 2012, Respondent responded to the credit card company that she had performed work totaling \$1,081.90, leaving a balance of \$1,418.10, which she would credit to Reeder's parents' credit card. However, Respondent did not promptly return the \$1,418.10.

7

9. It was not until March 7, 2013, that Respondent processed the refund of \$1,418.10 in unearned legal fees to the credit card.

CONCLUSIONS OF LAW:

10. By failing to obtain Reeder's informed written consent to accept fees paid by Reeder's parents for legal services to be performed on behalf of Reeder, Respondent accepted compensation for representing a client from one other than the client without complying with the requirement that Respondent obtain the client's informed written consent, in wilful violation of Rules of Professional Conduct, rule 3-310(F).

11. By failing to respond to Reeder's telephone messages of April 27, 2012, and May 24, 2012 requesting the status of her dissolution matter, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code section 6068(m).

12. By failing to provide an accounting to Reeder, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

13. By failing to process the refund of 1,418.10 in unearned legal fees to Reeder's parents for at least seven months after she agreed to refund the fees, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): In case numbers 09-O-11000, 10-O-00256, 10-O-02666, 10-O-05456, and 11-O-14717, Respondent failed to competently perform and failed to communicate in four client matters. Respondent also failed to return unearned fees in one matter, failed to properly withdraw from employment in one matter, failed to provide an accounting in one matter, failed to obtain the necessary waiver to accept fees from a non-client in one matter, and failed to cooperate in the State Bar investigations of two matters. This misconduct arose out of Respondent's representation of five family law clients from August 2007 through August 2010.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent committed multiple acts of misconduct by failing to comply with the requirement she obtain the client's informed written consent to accept fees from one other than the client, failing to communicate with her client, failing to render an accounting to her client, and failing to promptly refund unearned fees in a single client matter.

Harm (Std. 1.5(f)): Respondent significantly harmed Reeder's parents by failing to refund unearned fees for over seven months.

MITIGATING CIRCUMSTANCES

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a stipulation with the Office of the Chief Trial Counsel prior to trial, thereby 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

8

into a stipulation as to facts and culpability].) This mitigation is tempered due to the proximity of the trial date.

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 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.) 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).)

In this matter, Respondent admits to committing multiple acts of professional misconduct. Standard 1.7(a) requires that where a Respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

The most severe sanction applicable to Respondent's misconduct is found in Standard 2.15, which applies to Respondent's violation of Rules of Professional Conduct, rules 3-310(F) and 3-700(D)(2). Standard 2.15 provides that suspension not to exceed three years or reproval is appropriate for such violations.

Here, Respondent accepted advanced fees from the client's parents without securing the client's informed written consent and then failed to promptly return the uncarned fees. Respondent also failed to provide her client with an accounting when the amount of uncarned fees was in dispute.

In aggravation, Respondent engaged in multiple acts of misconduct and financially harmed the client's parents when she refused to refund the earned fees for several months. Additionally, Respondent has one imposition of prior discipline which involved five client matters. Standard 1.8(a) provides that if a member has a single prior record of discipline, the sanction must be greater than the previously imposed

9

sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.

In the prior discipline, Respondent was suspended for 60 days' actual, effective October 6, 2012, for 14 acts of misconduct in five separate client matters, for the same type of misconduct as in this matter.

Respondent's prior discipline is not remote in time. The misconduct resulting in the prior discipline occurred between August 2007 and August 2010. Respondent's prior misconduct was serious and was intimately related to the practice of law. Most troubling, Respondent was in the midst of negotiating the Stipulation in the prior discipline when the current misconduct occurred. In fact, Respondent signed the stipulation in the prior discipline only one week prior to committing the present misconduct.

The only factor in mitigation present is the fact that Respondent executed this stipulation. But this mitigation is tempered with the fact that Respondent agreed to and signed the stipulation on the eve of trial, and carries very little weight.

On balance, a six-month actual suspension with a three-year probationary period is warranted to fulfill the purposes of attorney discipline and ensure Respondent will not repeat the misconduct.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 3, 2014, the estimated prosecution costs in this matter are \$7,088. 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 <u>not</u> receive MCLE credit for completion of: State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course(s) to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

In the Matter of: KATHERINE MELISSA TOWNLEY Case number(s): 12-O-16835-PEM

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.

M M M	Respondent's Signature	KATHERINE MELISSA TOWNLEY
		Print Name
Date	Respondent's Counsel Signature	Print Name
2/4/14 Date	Deputy That Counsells Signature	SUZAN J. ANDERSON Print Name
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In the Matter of: KATHERINE MELISSA TOWNLEY Case Number(s): 12-O-16835-PEM

ACTUAL 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.)

a/J

Date

ARMENDARIZ

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 San Francisco, on March 5, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSION 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 San Francisco, California, addressed as follows:

KATHERINE M. TOWNLEY LAW OFC KATHERINE TOWNLEY 1350 PLACER ST REDDING, CA 96001

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

SUZAN J. ANDERSON, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 5, 2014.

Case Administrator State Bar Court