

ORIGINAL

PUBLIC MATTER

(Do not write above this line.)

State Bar Court of California Hearing Department Los Angeles DISBARMENT		
<p>Counsel For The State Bar</p> <p>Lara Bairamlan Deputy Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017 (213) 765-1338</p> <p>Bar # 253056</p>	<p>Case Number(s): 13-O-10125-RAP 13-O-13226</p>	<p>For Court use only</p> <p style="text-align: center;">FILED</p> <p style="text-align: center;">JUN 27 2014</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>James Henry Pasto 4010 Hicock Street San Diego, CA 92110 (619) 281-7714</p> <p>Bar # 48445</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p>DISBARMENT</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: JAMES HENRY PASTO</p> <p>Bar # 48445</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.

kwiktag® 048 639 167



A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **January 7, 1971.**
- (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."

LR

(Do not write above this line.)

- (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 [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 **09-O-13575**.
- (b) Date prior discipline effective **August 11, 2012**.
- (c) Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code sections 6068(a) and 6106**.
- (d) Degree of prior discipline **Four-year stayed suspension, five-year probation with conditions including 30 months actual suspension. See Attachment to Stipulation, at page 9.**
- (e) If respondent has two or more incidents of prior discipline, use space provided below:
- In case number 80-C-24 SD (S.D. 382), Bar Misc. 4282, effective January 9, 1982, Respondent was disciplined after stipulating to misconduct in a criminal conviction matter. Respondent was actually suspended for a period of one (1) year or until passage of the Professional Responsibility Examination, whichever was greater, but not less than one (1) year. See Attachment to Stipulation, at page 9.**
- (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.

(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. **See Attachment to Stipulation, at page 10.**
- (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.
- (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.

(Do not write above this line.)

- (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:

Pretrial Stipulation - See Attachment to Stipulation, at page 10.



(Do not write above this line.)

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:**

7. In August 2012, Respondent advised McQueen that attorney Darren Mitchell Pirozzi ("Pirozzi") would substitute in as McQueen's counsel in the criminal case.

8. In August 2010, after the Supreme Court Order became effective, Respondent became a law clerk for Pirozzi.

9. On August 30, 2012, Assistant United States Attorney Marietta Geckos ("Geckos") contacted Respondent by telephone and inquired whether Respondent was still representing McQueen in the criminal case. Respondent stated that a substitution of counsel form had been mailed on August 10, 2012, and that Pirozzi would be McQueen's new attorney. Geckos advised Respondent that, according to the court docket, there was no record of a substitution of counsel form having been filed with the Court.

10. On August 30, 2012, after receiving a telephone call from Geckos inquiring whether Pirozzi represented McQueen in the criminal case, Pirozzi advised both Geckos and Respondent that he would not substitute in as McQueen's counsel in the criminal case.

11. At no time did Respondent file or cause to be filed a substitution of attorney form substituting Pirozzi in place of Respondent, nor did Pirozzi or anyone else file a substitution. At no time did Respondent withdraw as McQueen's attorney of record in the criminal case.

12. At no time did Respondent notify McQueen that a substitution of attorney form had not been filed substituting Pirozzi in place of Respondent on behalf of McQueen in the criminal case and that Pirozzi would not substitute in as McQueen's counsel in the criminal case.

13. As of September 28, 2012, Respondent remained counsel of record for McQueen in the criminal case.

14. On September 28, 2012, Geckos filed a motion in the criminal case requesting the status of counsel for McQueen and to continue McQueen's sentencing hearing.

15. Respondent remained McQueen's attorney of record in the criminal case until October 15, 2012, when the United States District Court appointed a public defender as McQueen's new counsel.

CONCLUSIONS OF LAW:

16. By accepting \$25,000 from McQueen's mother as compensation for representing McQueen, between March 9, 2012 and March 23, 2012, without obtaining McQueen's informed written consent to receive such compensation, Respondent accepted compensation for representing a client from one other than the client, in willful violation of Rules of Professional Conduct, rule 3-310(F).

17. By failing to substitute out as counsel for McQueen in the criminal case when Respondent was actually suspended from the practice of law effective August 11, 2012 pursuant to the Supreme Court Order, thereby leaving McQueen effectively unrepresented in the criminal case, and thereafter failing to inform McQueen that Respondent had failed to substitute out of the criminal case, Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to Respondent's client, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

18. By failing to inform McQueen that a substitution of attorney had not been filed after Respondent was actually suspended from the practice of law effective August 11, 2012 pursuant to a the Supreme Court Order and that Pirozzi had not substituted into the criminal case as McQueen's attorney of record, Respondent failed to keep his client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

Case No. 13-O-13226 (State Bar Investigation)

FACTS:

19. On January 25, 2012, Respondent entered into a Stipulation Re Facts, Conclusions of Law and Disposition ("Stipulation") with the State Bar of California in case number 09-O-13575.

20. On February 15, 2012, the Hearing Department of the State Bar Court approved the Stipulation and recommended to the California Supreme Court that Respondent be suspended for four (4) years, stayed, and placed on five (5) years' probation with conditions including the condition that Respondent be actually suspended for the first thirty (30) months of probation.

21. On July 12, 2012, the Supreme Court issued Order number S201295 (State Bar case number 09-O-13575) imposing the discipline recommended by the Hearing Department of the State Bar Court and ordering that Respondent comply with rule 9.20, California Rules of Court (the "Supreme Court Order").

22. As of July 12, 2012, Respondent was still representing McQueen in the criminal case, had not earned all of the fees paid to him by McQueen's mother, and was still in possession of McQueen's client file.

23. On July 18, 2012, McQueen, with Respondent as his counsel, entered a guilty plea in the criminal case. On the same day, Respondent signed three documents as McQueen's counsel in the criminal case: (1) the plea agreement, (2) the forfeiture addendum to plea agreement, and (3) the consent to rule 11 plea in a felony case.

24. Respondent met with McQueen after he was released on July 18, 2012 to discuss the pending issues in the criminal case.

25. On July 24, 2012, Respondent, as McQueen's counsel, attended a hearing relating to McQueen's sentencing.

26. Pursuant to the Supreme Court Order, on September 10, 2012, Respondent filed a rule 9.20 compliance declaration with the State Bar Court in which he stated under penalty of perjury that as of the date upon which the Supreme Court Order to comply with rule 9.20 was filed, or July 12, 2012, Respondent had no clients, had no papers or other property to which clients were entitled, had earned all fees paid to him, and did not represent any clients in pending matters as of the date of the Supreme Court Order. These representations were false.

27. At no time did Respondent notify McQueen to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney or attorneys in the criminal case.

28. At no time did Respondent notify Geckos in the criminal case of his suspension and consequent disqualification to act as an attorney after the effective date of suspension on August 11, 2012.

29. At no time did Respondent file a copy of the notice of his suspension and consequent disqualification to act as an attorney after the effective date of suspension on August 11, 2012 with the United States District Court before which the criminal case was pending.

CONCLUSIONS OF LAW:

30. By failing to notify McQueen to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney or attorneys, failing to notify Geckos of his suspension and consequent disqualification to act as an attorney after August 11, 2012, and failing to file a copy of the notice of his suspension and consequent disqualification to act as an attorney after August 11, 2012 with United States District Court for the Southern District of California for inclusion in their file, as required by the Supreme Court Order, Respondent failed to obey rule 9.20, in willful violation of California Rules of Court, rule 9.20.

31. By filing a rule 9.20 compliance declaration with the State Bar Court on September 10, 2012, in which Respondent stated under penalty of perjury that as of the date upon which the Supreme Court order to comply with rule 9.20 was filed, or July 12, 2012, Respondent had no clients, had no papers or other property to which clients were entitled, had earned all fees paid to him, and did not represent any clients in pending matters, when Respondent knew the statements were false, Respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of Business and Professions Code section 6106.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has a prior record of two impositions of discipline. In State Bar case number 09-O-13575, Respondent was disciplined after stipulating to five (5) counts of misconduct, including four (4) violations of Business and Professions Code section 6068(a) and one (1) violation of Business and Professions Code section 6106 arising out of Respondent's breach of his fiduciary duty, failure to account for trust property he received, commingling of funds and violation of the Probate Code. The misconduct occurred between September 2003 and September 2008. The misconduct was aggravated by Respondent's prior record of discipline and the harm to the administration of justice. No mitigating circumstances were involved. Effective August 11, 2012, Respondent was suspended from the practice of law for four (4) years, stayed, with a five (5) year period of probation with conditions including that Respondent be actually suspended from the practice of law for a period of thirty (30) months.

In State Bar case number 80-C-24 SD (S.D. 382), Bar Misc. 4282, Respondent stipulated to misconduct arising from his conviction of one (1) count of Penal Code section 132 (offering false evidence). Effective January 8, 1982, Respondent was actually suspended for a period of one (1) year or until passage of the Professional Responsibility Examination, whichever was greater, but not less than one (1) year.



Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's current misconduct involves three (3) counts of misconduct in one (1) client matter and two (2) counts of misconduct relating to Respondent's rule 9.20 obligations.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, 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].) By entering into the stipulation, Respondent has acknowledged and accepted responsibility for his misconduct.

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).)

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

Standard 2.7, applicable to Respondent's violation of Business and Professions Code section 6106, would be the most severe sanction. However, because Respondent has two prior impositions of discipline, the most severe sanction applicable to Respondent's misconduct is found in standard 1.8(b). Standard 1.8(b) provides that if an attorney has two or more prior records of discipline, disbarment is

appropriate when actual suspension was ordered in his prior disciplinary matter and the most compelling mitigating circumstances do not clearly predominate.

In evaluating Respondent's misconduct and assessing the level of discipline, the Standards require disbarment. In this matter, although Respondent acknowledged and accepted responsibility for his misconduct by entering into this pretrial stipulation, which mitigates his misconduct, Respondent's misconduct is aggravated by his prior record of discipline and the presence of multiple acts of misconduct. Thus, Respondent's mitigation is both not compelling and is outweighed by the aggravating factors. Further, Respondent's misconduct is repeating since Respondent's current misconduct, like the prior misconduct, involves acts of moral turpitude.

Respondent's failure to comply with rule 9.20 also warrants disbarment. The standard for assessing discipline for a violation of rule 9.20 is set out in the rule itself. Rule 9.20(d) states, in pertinent part: "[A] suspended member's willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation." Respondent's willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally considered to be the appropriate sanction. (See. e.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.)

Given Respondent's prior discipline, including actual suspension, and his willful violation of rule 9.20, disbarment is the appropriate level of discipline. The imposition of disbarment serves the purpose of State Bar discipline to protect the public, the courts and the legal profession, to maintain high professional standards by attorneys, and to preserve public confidence in the legal profession. (Std. 1.3.)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of May 23, 2014, the prosecution costs in this matter are \$6,351. 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.

(Do not write above this line.)

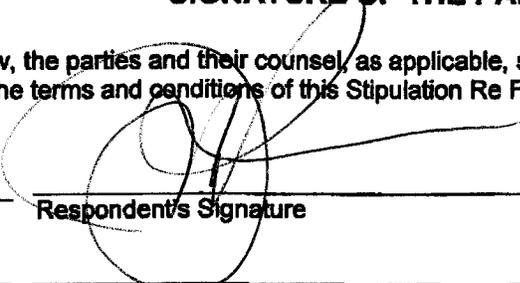
In the Matter of: JAMES HENRY PASTO	Case number(s): 13-O-10125, 13-O-13226
---	---

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.

May 28, 2014

Date



Respondent's Signature

James Henry Pasto

Print Name

Date

Respondent's Counsel Signature

Print Name

JUNE
May 3, 2014

Date

Deputy Trial Counsel's Signature



Lara Bairamian

Print Name

(Do not write above this line.)

In the Matter of:
JAMES HENRY PASTO

Case Number(s):
13-O-10125; 13-O-13226

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.

1. On page 7, paragraph number 8, the August 2010 date is changed to August 2012;
2. On page 7, paragraph 15, with the agreement of the parties the following is added to the end of the sentence: "McQueens file was forwarded to the public defender."

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 JAMES HENRY PASTO 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 27, 2014


GEORGE E. SCOTT, JUDGE PRO TEM
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 27, 2014, 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:

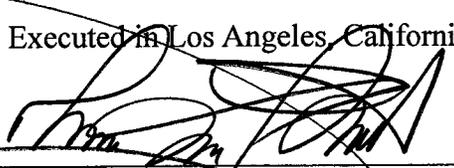
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JAMES HENRY PASTO
4010 HICOCK ST
SAN DIEGO, CA 92110

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

LARA BAIRAMIAN, 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 27, 2014.



Johnnie Lee Smith
Case Administrator
State Bar Court