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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>			<b>PUBLIC MATTER</b>
Counsel For The State Bar  <b>Ross E. Viselman</b> <b>Deputy Trial Counsel</b> <b>845 South Figueroa Street</b> <b>Los Angeles, California 90017-2515</b> <b>(213) 765-1295</b>  Bar # 204979	Case Number(s): <b>13-O-10617</b>	For Court use only   <div style="text-align: center;"> <b>FILED</b>    <b>JUL 22 2014</b>           STATE BAR COURT CLERK'S OFFICE          SAN FRANCISCO       </div>	
Counsel For Respondent  <b>Ellen A. Pansky</b> <b>PANSKY MARKLE HAM LLP</b> <b>1010 Sycamore Ave., Suite 308</b> <b>South Pasadena, California 91030</b> <b>(213) 626-7300</b>  Bar # 77688	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: <b>KOUSHA BEROKIM</b>  Bar # 242763  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.**

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### A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 1, 2006**.
- (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)

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) ☐ **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 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.
- (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.
- (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. **See attachment, page 8.**
- (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. **See attachment, page 8.**

- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**See attachment, page 8.**

**D. Discipline:**

(1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of **1 years**.
- 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:
- (b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of **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)

(3) ☒ **Actual Suspension:**

- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **30 days**.
- 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:**

- (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.

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- (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: .
- (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:
- |   |   |
|---|---|
| <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 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:

- (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:                      KOUSHA BEROKIM

CASE NUMBER:                          13-O-10617

**FACTS AND CONCLUSIONS OF LAW.**

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

Case No. 13-O-10617 (State Bar Investigation)

**FACTS:**

1. Between April 1, 2011 and May 30, 2012, Respondent maintained a client trust account at JP Morgan Chase Bank, account number xxxxx777<sup>1</sup> (the "CTA").
2. From April 1, 2011 until May 30, 2012, Respondent deposited into the CTA advanced attorney fees from clients.
3. During the same time period, Respondent did not promptly remove funds that he had earned as fees from his CTA as soon as his interest in such funds became fixed. Instead, Respondent left such personal funds in the CTA. The subject funds were not client funds.
4. On April 7, 2011, Respondent paid a non-client business expense to Southwestern University School of Law in the amount of \$63.64 from his CTA.
5. On each of April 19, 2011, April 12, 2012, and April 23, 2012, Respondent paid non-client business tax expenses, in the amount of \$6,000.00, \$800.00, and \$5,000.00, respectively, from his CTA.
6. On September 22, 2011, Respondent paid a personal parking ticket in the amount of \$50.00 from his CTA.
7. On May 17, 2012, Respondent paid another personal parking ticket in the amount of \$53.00 from his CTA.

**CONCLUSIONS OF LAW:**

8. By failing to withdraw promptly from his CTA fees that he earned, and by leaving such funds in his CTA to pay non-client expenses, Respondent commingled funds belonging to Respondent in a client trust account, in willful violation of Rules of Professional Conduct, rule 4-100(A).

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<sup>1</sup> The account number has been partially omitted due to privacy concerns.

## ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

**Remorse (Std. 1.6[g]):** As soon as Respondent became aware that he was mishandling his client trust account, Respondent candidly acknowledged his wrongdoing and expressed remorse. Moreover, Respondent promptly took steps to come into compliance with his ethical duties and did so spontaneously, without prompting by the State Bar. Specifically, Respondent registered to attend client trust accounting school, reorganized his accounting procedures and hired a dedicated bookkeeper.

**Pretrial Stipulation:** Although the facts in this matter are easily provable, Respondent cooperated with the State Bar by candidly acknowledging his misconduct upon his first contact with a State Bar investigator and by entering into this stipulation fully resolving the matter without the necessity of a trial, thereby saving State Bar 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].)

**Good character (Std. 1.6[f]):** Respondent has demonstrated extraordinary good character through a wide range of character references in the legal and general communities, who are aware of the full extent of Respondent's misconduct. These references have attested to Respondent's diligence, honesty, and professionalism. In addition, Respondent has participated in numerous charitable and pro bono activities.

## 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).)

Here, Respondent commingled personal funds with client funds and paid non-client expenses from his client trust account on six occasions during a year-long period from April 2011 through May 2012, in



violation of Rules of Professional Conduct, rule 4-100(A). The applicable sanction for commingling is found in Standard 2.2, which requires a minimum of three months of actual suspension.

Under the circumstances presented in Respondent's case, however, there are compelling reasons to deviate from Standard 2.2 and impose less than the three month minimum. (See, e.g., *Dudugjian v. State Bar of California* (1991) 52 Cal. 3d 1092 [deviating from the three month minimum standard in a commingling matter].) Although Respondent's use of his client trust account to pay personal expenses demonstrated a misuse and mismanagement of his client trust account, there is no evidence that Respondent misappropriated or actually endangered client funds, left insufficient funds in his account, or otherwise used client funds to pay personal expenses. There is also no evidence that any client was harmed as a result of Respondent's misconduct. Rather, Respondent drafted checks to pay for personal expenses from his client trust account instead of his general business account, and Respondent candidly conceded, Respondent lacked the safeguards and procedures necessary to ensure proper maintenance of his client trust account.

Once Respondent learned that he was mishandling his client trust account, Respondent voluntarily attended client trust accounting school to come into compliance with his ethical duties and engaged the services of a bookkeeper. Respondent has readily conceded his mismanagement of his accounting practices. In addition to the remedial measures that Respondent has taken, Respondent has demonstrated his good character and has entered into this pretrial stipulation to resolve the entire matter with the State Bar at an early stage. This mitigation stands in contrast to the lack of aggravation present.

In this light, one (1) year of stayed suspension and two (2) years of probation with conditions including a thirty (30) day actual suspension is appropriate discipline to protect the public, the courts and the legal profession, maintain high professional standards by attorneys and preserve public confidence in the legal profession.

Case law supports the recommended level of discipline. As noted above, in *Dudugjian v. State Bar of California* (1991) 52 Cal. 3d 1092, the Supreme Court declined to follow the three month mandatory minimum and ordered public reproof for an attorney who commingled personal funds in his client trust account. In *Dudugjian*, the attorney prematurely withdrew client funds from his client trust account believing in good faith that he was owed these funds as attorney fees. The Supreme Court imposed public reproof under these circumstances and in light of the attorney's many years of practice with no discipline. Here, Respondent's misconduct did not involve moral turpitude, and there is no evidence that Respondent's commingling actually harmed a client or that Respondent misappropriated client funds. Although Respondent is not entitled to mitigation for his lack of prior discipline in that he was admitted less than five years before his misconduct started, Respondent has demonstrated a willingness to conform his conduct to the ethical standards, by agreeing to enter into this pre-trial stipulation and attending client trust accounting school. Under these circumstances, the recommended level of discipline is consistent with the Standards, the precedent of the California Supreme Court, and the goal of protecting the public.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of May 2, 2014, the prosecution costs in this matter are \$5,182. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

## **EXCLUSION FROM MCLE CREDIT**


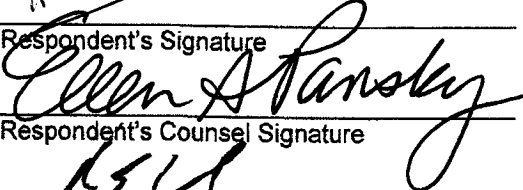
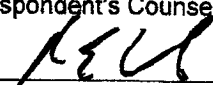
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School and/or any other educational course(s) to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: KOUSHA BEROKIM	Case number(s): 13-O-10617
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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>June 30, 2014</u> Date	 Respondent's Signature	<u>Kousha Berokim</u> Print Name
<u>July 2, 2014</u> Date	 Respondent's Counsel Signature	<u>Ellen A. Pansky</u> Print Name
<u>June 13, 2014</u> Date	 Deputy Trial Counsel's Signature	<u>Ross Viselman</u> Print Name

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In the Matter of: <b>KOUSHA BEROKIM</b>	Case Number(s): <b>13-O-10617</b>
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### 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.)**

Date

7-18-14

  
\_\_\_\_\_  
**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 San Francisco, On July 22, 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 San Francisco, California, addressed as follows:

ELLEN ANNE PANSKY  
PANSKY MARKLE HAM LLP  
1010 SYCAMORE AVE UNIT 308  
SOUTH PASADENA, CA 91030

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

ROSS E. VISELMAN, Enforcement, Los Angeles  
TERRIE GOLDADE, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 22, 2014.

  
Laurretta Cramer  
Case Administrator  
State Bar Court