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**PUBLIC MATTER**

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

<b>Counsel For The State Bar</b>  Elizabeth Stine Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213)765-7342  Bar # 256839	<b>Case Number(s):</b> 13-O-11045 13-O-13244	<b>For Court use only</b> <b>FILED</b>  <b>DEC 23 2013</b> STATE BAR COURT CLERK'S OFFICE LOS ANGELES
<b>Counsel For Respondent</b>  Susan Margolis Margolis & Margolis, LLP 2000 Riverside Dr. Los Angeles, CA 90039 (323) 953-8996  Bar # 104629	<b>Submitted to: Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
<b>In the Matter of:</b> <b>BRENT RANDALL PHILLIPS</b>  Bar # 235753  A Member of the State Bar of California (Respondent)	<b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

**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 March 1, 2005.
- (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.

(Effective January 1, 2011)

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Stayed Suspension



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- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - ☒ Costs 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 [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
  - (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 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.

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- (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 on page 9.
- (8) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances**

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ \_\_\_\_\_ 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 in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

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(13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances**

See Attachment on page 9.

**D. Discipline:**

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of two (2) 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 1.4(c)(ii), 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:**
- Passage of the MPRE within six (6) months prior to the effective date of discipline herein shall satisfy condition at Section F(1) above regarding MPRE.

**ATTACHMENT TO**

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:

BRENT RANDALL PHILLIPS

CASE NUMBERS:

13-O-11045 & 13-O-13244

**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-11045 (Complainant: Richard Aucker)

**FACTS:**

1. Respondent is a California licensed attorney and is also admitted to practice law in Arizona and Maryland. Respondent is not licensed to practice law in Pennsylvania.
2. Pennsylvania requires a person to be an active member of the Pennsylvania State Bar in order to practice law or offer legal services in that state. (Pennsylvania Rules of Professional Conduct, rule 5.5). Pennsylvania's Rule 5.5 does allow an out-of-state attorney to offer legal services on a temporary basis provided they are undertaken in association with a local attorney who is licensed in Pennsylvania and who actively participates in the case.
3. On November 18, 2011, Richard Aucker signed a retainer agreement hiring Respondent's law corporation, Phillips Law Center, to provide legal services with regard to loan modification services for his home located in Dillsburg, Pennsylvania. Mr. Aucker was a resident of Pennsylvania at the time. Mr. Aucker paid Respondent at least \$1,945 in advanced fees, as Respondent requested. Respondent did not associate with a local attorney in Pennsylvania to actively participate in the case.
4. In January 2013, Mr. Aucker sent a letter to Respondent terminating his services and demanding a refund.
5. On January 11, 2013, Respondent refunded \$295 to Mr. Aucker. On February 8, 2013, Mr. Aucker filed a complaint with the State Bar. On February 13, 2013, prior to being contacted by the State Bar regarding Mr. Aucker's complaint, Respondent refunded \$1,650.

**CONCLUSIONS OF LAW:**

6. By agreeing to represent Richard Aucker in connection with a loan modification for client's home in Pennsylvania, without the association or participation of a local Pennsylvania attorney, Respondent practiced law in violation of the regulations of the profession in Pennsylvania, namely rule 5.5 of the Pennsylvania Rules of Professional Conduct, and in willful violation of rule 1-300(B), Rules of Professional Conduct.

7. By taking a fee of at least \$1,945 from Richard Aucker to perform legal services in Pennsylvania, a state where Respondent was not licensed to practice law, Respondent collected an illegal fee in willful violation of rule 4-200(A), Rules of Professional Conduct.

Case No. 13-O-13244 (Complainant: Abraham and Achamma Mathew)

FACTS:

8. Respondent is a California licensed attorney and is also admitted to practice law in Arizona and Maryland. Respondent is not licensed to practice law in New Jersey.
9. New Jersey requires a person to be an active member of the New Jersey State Bar in order to practice law or offer legal services in that state. (New Jersey Rules of Professional Conduct, rule 5.5). New Jersey Rule 5.5 allowed an out-of-state attorney to provide legal services on an occasional basis provided he associated with a lawyer admitted to practice law in New Jersey and that lawyer is held responsible for the out-of-state lawyer's conduct in the case.
10. On December 29, 2011, Abraham and Achamma Mathew signed a retainer agreement hiring Respondent's law corporation, Phillips Law Center, to provide legal services with regard to loan modification services for their home located in East Hanover, New Jersey. The Mathews were residents of New Jersey at the time. The Mathews paid Respondent \$3,995 in advanced fees, as Respondent requested. Respondent did not associate with a local attorney in New Jersey to actively participate in the case.
11. On April 28, 2012, Respondent submitted a loan modification request on the Mathews' behalf to Bank of America, but the request was denied on November 7, 2012. After receiving the denial, the Mathews wrote to Respondent requesting a refund.
12. On June 11, 2013, after Mr. and Mrs. Mathew had filed a complaint with the State Bar, Respondent provided a full refund to them.

CONCLUSIONS OF LAW:

13. By agreeing to represent Abraham and Achamma Mathew in connection with obtaining a loan modification for clients' home in New Jersey, without the association or participation of a local New Jersey attorney, Respondent practiced law in violation of the regulations of the profession in New Jersey, namely rule 5.5 of the New Jersey Rules of Professional Conduct, and in willful violation of rule 1-300(B), Rules of Professional Conduct.
14. By taking a fee of \$3,995 from Abraham and Achamma Mathew to perform legal services in New Jersey, a state where Respondent was not licensed to practice law, Respondent collected an illegal fee in willful violation of rule 4-200(A), Rules of Professional Conduct.



## AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Misconduct (Std. 1.2(b)(ii)):** Respondent engaged in the unauthorized practice of law in two client matters, and charged and collected two illegal fees. Therefore, Respondent engaged in multiple acts of misconduct.

## MITIGATING CIRCUMSTANCES.

**No Prior Discipline:** Respondent was admitted to practice law in California on March 1, 2005. Respondent has practiced law for eight (8) years without a prior record of discipline in California. Additionally, Respondent was admitted to practice law in the State of Maryland on December 17, 2003 and in the State of Arizona on October 22, 2007. Respondent has never been disciplined in any of those jurisdictions. Although Respondent's misconduct is serious, the fact that he has no prior record of discipline is entitled to significant weight in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596.)

**Prefiling Stipulation:** Shortly after disciplinary proceedings commenced, Respondent worked with the State Bar to resolve these matters before the filing of disciplinary charges. Respondent has provided refunds to Mr. Aucker and Mr. and Mrs. Mathew and admitted culpability. (*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 provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." (*In re Morse* (1995) 11 Cal.4th 184, 205; std. 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Standard 2.10 states a member's culpability of violation of any provision of the Business and Professions Code not specified in these standards or of a willful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or harm to the victim with due regard to the purposes of imposing discipline. Here, in two nearly identical matters, Respondent violated Rule of Professional Conduct rule 1-300(B) by practicing law without a license in Pennsylvania and New Jersey, and rule 4-200(A) by collecting an illegal fee.

These sections are not otherwise specified in the Standards and so Standard 2.10 applies. Respondent has refunded \$1, 995 to Mr. Aucker and \$3,995 to the Mathews.

The purposes of imposing discipline – the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession – are well served by a period of stayed suspension (See Stnd 1.3). An appropriate level of discipline is two (2) years stayed suspension and two (2) years' probation.

This level of discipline is also consistent with case law. Engaging in the unauthorized practice of law is a breach of the duties of an attorney and therefore suspension is warranted. (See *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896 [Respondent engaged in the unauthorized practice of law in another jurisdiction in two cases and over several years, charged an illegal and unconscionable fee, failed to return unearned fees, failed to maintain funds in trust, and engaged in moral turpitude for misrepresenting her entitlement to practice law. Additionally, there was significant mitigation and aggravation present and Respondent had one prior discipline. Respondent received six months actual suspension and until restitution is paid in full].)

In the present case, Respondent's misconduct of engaging in the unauthorized practice of law spanned the course of a little over a year and there was a collection of an illegal fee. However, Respondent differs from *Wells* because he does not have a prior discipline and did not engage in moral turpitude. Respondent associated with local licensed Pennsylvania and New Jersey attorneys in providing loan modification services to other clients; however, he did not ensure that those local licensed attorney were actively participating in providing loan modification services to Mr. Aucker and the Mathews. As such, a stayed suspension satisfies the purposes of imposing discipline.

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

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 6, 2013, the prosecution costs in this matter are approximately \$3,538. 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 reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

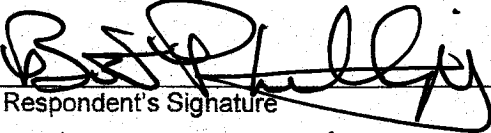
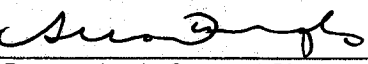
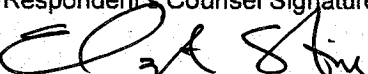
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In the Matter of:  
BRENT RANDALL PHILLIPS  
SBN 235753

Case number(s):  
13-O-11045 & 13-O-13244

### 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>12/12/13</u> Date	 Respondent's Signature	<u>Brent Randall Phillips</u> Print Name
<u>12/13/13</u> Date	 Respondent's Counsel Signature	<u>Susan Margolis</u> Print Name
<u>12-13-13</u> Date	 Deputy Trial Counsel's Signature	<u>Elizabeth Stine</u> Print Name

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In the Matter of:  
BRENT RANDALL PHILLIPS  
SBN 235753

Case Number(s):  
13-O-11045 & 13-O-13244

### 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.)**

12-23-13

Date

  
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 December 23, 2013, 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:

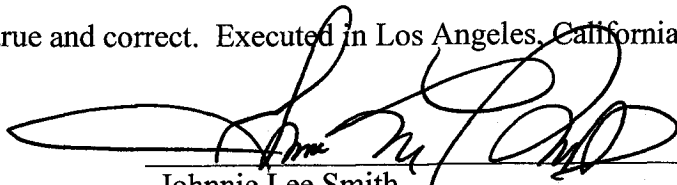
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SUSAN LYNN MARGOLIS  
MARGOLIS & MARGOLIS LLP  
2000 RIVERSIDE DR  
LOS ANGELES, CA 90039

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

ELIZABETH STINE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 23, 2013.

  
\_\_\_\_\_  
Johnnie Lee Smith  
Case Administrator  
State Bar Court