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State Bar Court of California Hearing Department Los Angeles DISBARMENT		
<p>Counsel For The State Bar</p> <p>Timothy G. Byer Deputy Trial Counsel The State Bar of California 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1325</p> <p>Bar # 172472</p>	<p>Case Number(s): 13-O-14074, 13-O-16421, 14-N-01592, 14-N-01593</p>	<p>For Court use only</p> <p style="font-size: 2em; font-weight: bold; text-align: center;">PUBLIC MATTER</p> <p style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</p> <p style="text-align: center; font-size: 1.2em;">SEP 29 2014 </p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p style="text-align: center;">kwiktag® 183 821 092</p>
<p>In Pro Per Respondent</p> <p>Thomas D. Pham, Jr. 17111 Beach Blvd., Ste. 100 Huntington Beach, CA 92647 (714) 260-4321</p> <p>Bar # 183521</p>	<p>Submitted to: Assigned 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: THOMAS D. PHAM, JR.</p> <p>Bar # 183521</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.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **August 26, 1996**.
- (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."

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- (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 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 **See Attachment, pages 8-9.**
 - (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:

11-O-13516, et al., eff. September 15, 2012, rules 1-300(A), 3-110(A), and 4-100(B)(3), sections 6103, 6106, and 6106.3, 60 days actual suspension; 12-O-14304, et al., eff. December 20, 2013, sections 6068(a), 6068(i), 6068(o)(3), 6103, and 6106, six months actual suspension; 13-PM-13867, eff. September 13, 2013, one year actual suspension.
- (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.

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- (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, page 9.**
- (8) **Restitution:** Respondent failed to make restitution. **See Attachment, page 9.**
- (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.

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(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:

Pre-trial stipulation. See Attachment, page 9.

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:**

Case No. 13-O-16421 (State Bar Investigation)

FACTS:

8. On September 15, 2012, the Supreme Court issued an order in Supreme Court case number 203034, imposing discipline on Respondent for misconduct he had committed in State Bar Court case numbers 11-O-13516 and 11-O-18171. The Supreme Court's order placed Respondent on disciplinary probation and required Respondent to comply with the following probation conditions by October 15, 2013:

- A. That he pay restitution in the sum of \$8,500.00, plus interest at 10 percent per annum, to Kanchana Taveesub;
- B. that he pay \$250 in judicial sanctions to the Riverside Superior Court;
- C. that he attend State Bar Ethics School and pass the examination following;
- D. that he take and pass the Multistate Professional Responsibility Examination; and
- E. that he timely submit a final probation report.

9. Respondent failed to comply with conditions attached to Respondent's disciplinary probation in State Bar Case no. 11-O-13516 as follows:

- A. By failing to make restitution in the principal amount of \$8,500.00, plus interest at 10 percent per annum, to Kanchana Taveesub within one year of the effective date of discipline; and
- B. By failing to present satisfactory proof to the Office of Probation, within one year of the effective date of discipline, that he paid the \$250.00 sanction award previously ordered by the Riverside County Superior Court in the case entitled *Vega v. Superior Super Warehouse*, Riverside County Superior Court case no. RIC 538 234; and
- C. By failing to attend State Bar Ethics School and to pass the examination following within one year of the effective date of discipline; and
- D. By failing to take and pass the Multistate Professional Responsibility Examination ("MPRE") within one year of the effective date of discipline; and
- E. By failing to submit his final report to the Office of Probation by September 15, 2013.

CONCLUSIONS OF LAW:

10. By failing to comply with conditions attached to his disciplinary probation in State Bar Case no. 11-O-13516, Respondent willfully violated Business and Professions Code, section 6068(k).

Case No. 14-N-01592 (State Bar Investigation)

FACTS:

11. On November 20, 2013, the Supreme Court issued an order in Supreme Court case number S213326, imposing discipline on Respondent for misconduct he had committed in State Bar Court case numbers 12-O-14304 and 12-O-17114. The Supreme Court's order required Respondent to comply with Rule of Court 9.20, and required Respondent to file a rule 9.20 declaration in State Bar Court by January 29, 2014.

12. Respondent failed to file a declaration of compliance with California Rules of Court, rule 9.20 in conformity with the requirements of rule 9.20(c) with the clerk of the State Bar Court by January 29, 2014, as required by Supreme Court order no. S213326, in willful violation of California Rules of Court, rule 9.20.

CONCLUSIONS OF LAW:

13. By failing to file a declaration of compliance with California Rules of Court, rule 9.20 in conformity with the requirements of rule 9.20(c) with the clerk of the State Bar Court by January 29, 2014, as required by Supreme Court order no. S213326, Respondent willfully violated California Rules of Court, rule 9.20.

Case No. 14-N-01593 (State Bar Investigation)

FACTS:

14. On December 6, 2013, the California Supreme Court issued an order in Supreme Court case number S203034, revoking Respondent's probation. The Supreme Court's order required Respondent to comply with Rule of Court 9.20, and required Respondent to file his rule 9.20 declaration in State Bar Court by February 14, 2014.

15. Respondent failed to file a declaration of compliance with California Rules of Court, rule 9.20 in conformity with the requirements of rule 9.20(c) with the clerk of the State Bar Court by February 14, 2014, as required by Supreme Court order no. S203034, in willful violation of California Rules of Court, rule 9.20.

CONCLUSIONS OF LAW:

16. By failing to file a declaration of compliance with California Rules of Court, rule 9.20 in conformity with the requirements of rule 9.20(c) with the clerk of the State Bar Court by February 14, 2014, as required by Supreme Court order no. S203034, Respondent willfully violated California Rules of Court, rule 9.20.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has been disciplined on three prior occasions. Effective September 15, 2012, the California Supreme Court ordered that Respondent be suspended from the practice of law in California for one year, that execution of the suspension be stayed, and that he be placed on probation for one year, subject to certain conditions, including 60 days of actual suspension, and restitution to his client (including the principal amount plus interest at 10 percent per annum). The discipline resulted from Respondent's misconduct in case numbers 11-O-13516 and 11-O-18171. Respondent's misconduct in the first case consisted of violations of Business and Professions Code sections 6103 and 6106, as well as Rules of Professional Conduct, rule 3-110(A). Respondent's misconduct in the second case consisted of violations of Business and Professions Code section 6106.3, as well as Rules of Professional Conduct, rules 3-110(A), 1-300(A) and 4-100(B)(3). In the first matter, Respondent failed to appear at an Order to Show Cause hearing, and after the matter was dismissed for his failure to appear, Respondent misrepresented to his client that her case was still pending. The court later set aside the dismissal, but ordered Respondent to pay sanctions which Respondent failed to pay. In the second matter, Respondent charged and collected an illegal fee, failed

to provide an accounting to his client when she requested a refund, and allowed his non-attorney staff to give his client legal advice. Respondent's misconduct occurred between April 2010 and May 2011.

Effective December 20, 2013, the California Supreme Court ordered that Respondent be suspended from the practice of law in California for one year, that execution of the suspension be stayed, and that he be placed on probation for two years, subject to certain conditions, including six months of actual suspension, and restitution to his client (including the principal amount plus interest at 10 percent per annum). The discipline resulted from Respondent's misconduct in case numbers 12-O-14304 and 12-O-17114. Respondent's misconduct in the first case consisted of violations of Business and Professions Code sections 6103 and 6068(o)(3), due to his disobedience of a court's sanctions order in the amount of \$1,500, and his failure to report the sanctions to the State Bar within 30 days of the imposition of the sanctions. Respondent's misconduct in the second case consisted of violations of Business and Professions Code section 6068(a), 6106, and 6068(i) by practicing law while he was not entitled, by committing moral turpitude thereby, and by failing to cooperate in the State Bar's investigation of those allegations. Respondent's misconduct in these matters was committed between March 2012 and January 2013.

On September 13, 2013, the Hearing Department of the State Bar Court granted a motion by the Office of Probation, in case no. 13-PM-13867, to revoke Respondent's probation after finding that he had violated his probation conditions in case nos. 11-O-13516 and 11-O-18171, specifically that he had failed to file his first three quarterly reports and failed to provide proof that he had offered binding fee arbitration to one of his complaining witnesses. The court ordered Respondent involuntarily enrolled as inactive, and recommended that he be actually suspended for one year and until he makes complete restitution. On the date of the order revoking his probation, his restitution obligation was two days from its deadline.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent has violated Business and Professions Code sections 6068(k)[failure to comply with conditions of probation], 6125/6126 [practicing law while not entitled], 6068(i)[failure to cooperate in a State Bar investigation], 6106 [moral turpitude], and twice failed to obey Rule 9.20, California Rules of Court.

Failure to Make Restitution (Std. 1.5(i)): Respondent has failed to make restitution to Kanchana Taveesub in the principal amount of \$8,500.00, plus interest at 10 percent per annum, or in any amount whatsoever.

MITIGATING CIRCUMSTANCES.

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

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for

Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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

In this matter, Respondent admits to committing 10 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 1.8(b)(1), which states: “If a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct: [...] 1. Actual suspension was ordered in any one of the prior disciplinary matters[.]”

Respondent has been disciplined on three prior occasions, all three of which included actual suspension, and he has yet to fully comply with the disciplinary orders in any of those matters. He has four times been disciplined in client matters, including failing to perform with competence and failing to account, charging and collecting advanced fees for home mortgage loan modifications prior to performance, multiple violations of sanctions orders and failures to report them to the State Bar. His current misconduct includes three violations for which he has previously been disciplined: practicing law while not entitled, failing to cooperate, and moral turpitude. The “new” violations are all violations of prior disciplinary orders (failing to comply with conditions of probation and failures to file rule 9.20 declarations), all of which indicate an inability to conform his practice to ethical standards.

Disbarment is also supported by caselaw. In *Morgan v. State Bar* (1990) 51 Cal.3d 598, the court found that an attorney who had had four prior disciplinary proceedings (for misconduct involving misappropriations, the unauthorized practice of law, settling cases without authority, failing to perform competently, and failing to communicate with a client) had “demonstrate[d] a pattern of professional misconduct and an indifference to this court’s disciplinary orders.” Since the attorney’s character evidence and community service did not constitute compelling mitigating circumstances, the Court applied the then-applicable Standard 1.7(b) and disbarred the attorney.

In *In the Matter of Shalant* (2005) 4 Cal. State Bar Ct. Rptr.829, the Review Department recommended that the attorney be disbarred for the following misconduct: (1) entering into an agreement with a client in a medical malpractice case providing for a fee above the limits prescribed by MICRA in violation of rule 4-200(A) of the Rules of Professional Conduct; and (2) committing an act of moral turpitude by insisting on modifying the fee agreement to include a \$25,000 non-refundable fee 10 months after the case had been filed and only 3 business days before the client's deposition, and threatening to withdraw if the client did not pay the additional fee. The attorney had the following disciplinary history in the following order: (1) a private reproof; (2) public reproof; (3) two year stayed suspension; and (4) private reproof.

COSTS OF DISCIPLINARY PROCEEDINGS.

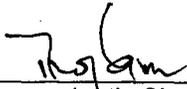
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of September 17, 2014, the prosecution costs in this matter are \$13,183.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: THOMAS D. PHAM, JR.	Case number(s): 13-O-14074, 13-O-16421, 14-N-01592, 14-N-01593
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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>9-22-2014</u> Date	 Respondent's Signature	<u>Thomas D. Pham, Jr.</u> Print Name
<u> </u> Date	<u> </u> Respondent's Counsel Signature	<u>N/A</u> Print Name
<u>9.22.14</u> Date	 Deputy Trial Counsel's Signature	<u>Timothy G. Byer</u> Print Name

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In the Matter of: THOMAS D. PHAM, JR.	Case Number(s): 13-O-14074, 13-O-16421, 14-N-01592, 14-N-01593
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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.

On page 7 of the stipulation, paragraph 8, "Supreme Court case number 203034" is deleted, and in its place is inserted "Supreme Court case number S203034".

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 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.

9/26/14
Date



DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 29, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

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

THOMAS PHAM JR
PHAM & ASSOCIATES
17111 BEACH BLVD STE 100
HUNTINGTON BEACH, CA 92647

THOMAS D, JR PHAM
9315 BOLSA AVE, SUITE 166
WESTMINSTER, CA 92683

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

TIMOTHY BYER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 29, 2014.



Rose M. Luthi
Case Administrator
State Bar Court