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State Bar Court of California Hearing Department San Francisco STAYED SUSPENSION		
Counsel For The State Bar Susan I. Kagan Senior Trial Counsel 180 Howard St. San Francisco, CA 94105 (415) 538-2037 Bar # 214209	Case Number(s): 13-O-16049	For Court use only PUBLIC MATTER FILED <i>rd</i> NOV 10 2014 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Larry Pilgrim, Esq. 400 Alhamba Blvd Sacramento, CA 95816 (916) 424-0400 Bar # 178199	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: DONALD MASUDA Bar # 96560 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 22, 1980**.
- (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 **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."

(Effective January 1, 2014)

Stayed Suspension



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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 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 [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 **03-O-04963. See Attachment at p. 9.**
 - (b) Date prior discipline effective **December 20, 2005**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code section 6090.5**
 - (d) Degree of prior discipline **Private Reprimand**
 - (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 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. **See Attachment at p. 9.**
- (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.

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(Do not write above this line.)

- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Attachment at p. 9.**
- (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. **See Attachment at p. 9.**
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.

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(13) No mitigating circumstances are involved.

Additional mitigating circumstances

Prefiling Stipulation. See Attachment at p. 9.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **one (1) year**.

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:

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:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DONALD MASUDA

CASE NUMBER: 13-O-16049

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-16049 (Complainant: Adrian Andrade)

FACTS:

1. On March 3, 2009, Respondent was hired by Adrian Andrade ("Andrade"), to file a petition for habeas corpus. Andrade was 19 years old and serving a sentence of 25 years to life in Pelican Bay after a felony conviction.

2. From March 3, 2009, through March 4, 2010, Andrade paid \$15,000 to Respondent as advanced fees in the habeas matter.

3. On August 17, 2009, Respondent through attorney, Kenneth Giffard ("Giffard") filed a petition for writ of habeas corpus on behalf of Andrade, *Andrade v. Cate*, United States District Court for the Eastern District of California, Case No. S-09-2270- KJM-TJB.

4. On April 23, 2010, the Office of the Attorney General filed an answer to the petition for writ of habeas corpus. Respondent received the answer, but did not provide a copy to Andrade.

5. On July 6, 2010, Respondent, again through Giffard, filed a Reply to the answer in the habeas matter. Respondent never provided a copy of the reply brief to Andrade, or any of the other pleadings in the matter. Thereafter, Respondent ceased performing any work in the habeas matter on behalf of Andrade and effectively abandoned Andrade.

6. From June 15, 2010, through July 26, 2011, Andrade sent 16 letters to Respondent requesting a status update in the habeas matter. Respondent received the letters, but failed to respond.

7. On March 8, 2011, the court issued Findings and Recommendations ("F&R") denying Andrade's petition for writ of habeas corpus. Respondent received the F&R, but failed to inform Andrade of the F&R. Thereafter, Respondent failed to file an objection to the F&R.

8. On January 18, 2012, judgment was entered against Andrade in the habeas matter. Respondent received the judgment, but failed to inform Andrade that judgment was entered against him. Respondent failed to file a notice of appeal and failed to seek a certificate of appealability on behalf of Andrade.

9. From August 23, 2012, through April 17, 2013, Andrade sent three letters to Respondent requesting a status update in the habeas matter. Respondent received the letters, but failed to respond. On May 18, 2013, Andrade's mother called Respondent and left a voicemail requesting a status update in the habeas matter. Respondent received the voicemail, but failed to respond to Andrade or his mother.

10. Having not heard from his attorney, Andrade sent a letter to the court on June 10, 2013, requesting an update on the status of the habeas matter. Andrade learned from the court that his petition for writ of habeas corpus had been denied on March 8, 2011, and judgment was entered on January 18, 2012.

11. On July 1, 2013, Andrade sent a letter to Respondent terminating his services and requesting a copy of his file. Respondent received the letter, but failed to provide a copy of the file to Andrade.

12. On August 30, 2013, Andrade filed a motion for relief from judgment on his own behalf.

13. On September 24, 2013, the court issued an order granting Andrade's motion and referred the case to a new magistrate judge for further proceedings. In the order, the court found that there was sufficient basis for relief based on Respondent's abandonment of Andrade after filing the Reply on July 6, 2010, Respondent's failure to object to the F&R, Respondent's failure to seek a certificate of appealability, Respondent's failure to file a notice of appeal and Respondent's failure to notify Andrade of the denial of the petition. The habeas matter is currently pending.

14. Respondent performed no services of value on behalf of Andrade and did not earn the \$15,000 paid as advanced fees. It was not until October 2014, that Respondent refunded the unearned fees to Andrade.

CONCLUSIONS OF LAW:

15. By failing to take any action on Andrade's behalf after filing the reply brief on July 6, 2010, and constructively terminating his employment, and by failing to inform Andrade that Respondent was withdrawing from employment, Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in willful violation of rule 3-700(A)(2) of the Rules of Professional Conduct, rule 3-700(A)(2).

16. By failing to refund unearned fees to Andrade until October 2014, more than four years after his employment terminated, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

17. By failing to respond to 19 written- and one telephonic- reasonable status inquiries made by Andrade from June 15, 2010, through July 26, 2011, and from August 23, 2012, through May 18, 2013, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services in willful violation of section 6068(m) of the Business and Professions Code.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has a prior record of discipline in Case No. 03-O-04963, effective December 20, 2005. Respondent was privately reprovved for negotiating a settlement with a client that involved the withdrawal of the client's State Bar complaint in violation of section 6090.5 of the Business and Professions Code.

Harm (Std. 1.5(f)): Respondent's abandonment of his client and failure to refund unearned fees caused significant harm to the client.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's three acts of misconduct represent multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

Good Character (std. 1.6(f)): Respondent submitted 12 character letters from people who are aware of the full extent of Respondent's misconduct and attest to his integrity, honesty and professionalism. The character reference letters are from judges, attorneys and clients.

Additional Mitigating Circumstances:

Prefiling Stipulation: Respondent is entitled to mitigation for entering into a stipulation with the Office of Chief Trial Counsel prior to the filing of charges in the above referenced disciplinary matter, 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 committed three acts of professional misconduct. Standard 1.7(a) requires that where a Respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

The most severe sanction applicable to Respondent's misconduct is found in Standard 2.5(c), which applies to Respondent's violation(s) of rule 3-700(A)(2) of the Rules of Professional Conduct, constructive termination/abandonment of Andrade. Standard 2.5(c) provides: "Reproval is appropriate for failing to perform legal services or properly communicate in a single client matter." Standard 1.8(a) also applies since Respondent has a prior record of discipline. Standard 1.8(a) provides: "If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust."

Respondent abandoned an incarcerated client, resulting in the denial of the client's habeas corpus petition. It was only through the client's own efforts that he was able to obtain relief from the judgment. Although Respondent attempted to ameliorate the misconduct by filing a belated reply on behalf of the client, Respondent never apologized to the client or obtained his authorization or consent to the filing. Respondent's misconduct is serious.

To determine the appropriate level of discipline, consideration must also be given to the aggravating and mitigating circumstances. In aggravation, Respondent has a prior record of discipline. In 2005, Respondent was privately reprovved for misconduct in 2004. The prior discipline was serious and not remote in time. Therefore, it is appropriate for the sanction to be greater than a reprovval in this matter. Also in aggravation, Respondent committed multiple acts of misconduct and the misconduct caused significant harm to the client. Respondent is entitled to mitigation for entering into a pre-filing settlement and for good character. Respondent has also belatedly refunded the unearned fees to Andrade. Although Respondent is not entitled to mitigation for this, it demonstrates that Respondent has recognized and taken responsibility for his misconduct.

Based on the serious nature of Respondent's misconduct and the aggravating circumstances, suspension is warranted under the standards.

Case law is instructive. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the court recommended a six-month stayed suspension for an attorney who failed to perform in a criminal appellate and habeas corpus proceedings, failed to obey court orders and failed to report sanctions in a single client matter. In aggravation, the court found multiple acts of misconduct and harm. In mitigation, the court found no prior record of discipline in 17 years of practice, no further misconduct, good character and cooperation for entering into a fact stipulation.

Respondent's misconduct is similar to that in *Riordan*, however, there are less factors in mitigation and more in aggravation- most significantly, Respondent's prior record of discipline. Therefore, a greater level of discipline than that recommended in *Riordan* is appropriate.

On balance, a one-year stayed suspension with a two year probationary period will serve the purposes of attorney discipline.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of October 1, 2014, the prosecution costs in this matter are \$3,571.10. 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

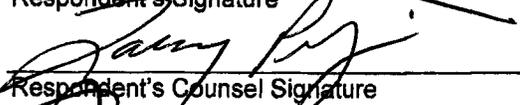
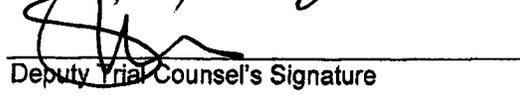
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: DONALD MASUDA	Case number(s): 13-O-16049
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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>10-25-14</u> Date	 Respondent's Signature	<u>Donald Masuda</u> Print Name
<u>10-25-14</u> Date	 Respondent's Counsel Signature	<u>Larry Pilgrim, Esq.</u> Print Name
<u>10/31/14</u> Date	 Deputy Trial Counsel's Signature	<u>Susan I. Kagan</u> Print Name

(Do not write above this line.)

In the Matter of:
DONALD MASUDA

Case Number(s):
13-O-16049

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.)

Date

Nov. 10, 2014


Judge of the State Bar Court

LUCY ARMENDARIZ

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 November 10, 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:

LARRY R. PILGRIM
LAW OFC LARRY PILGRIM
400 ALHAMBRA BLVD
SACRAMENTO, CA 95816

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

SUSAN I. KAGAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 10, 2014.



Mazie Yip
Case Administrator
State Bar Court