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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>REPROVAL</b>		
<b>Counsel For The State Bar</b>  <b>Charles T. Calix</b> <b>Deputy Trial Counsel</b> <b>845 S. Figueroa Street</b> <b>Los Angeles, CA 90017-2515</b> <b>(213) 765-1000</b>  <b>Bar # 146853</b>	<b>Case Number(s):</b> <b>13-O-16387-LMA</b>	<b>For Court use only</b>  <b>PUBLIC MATTER</b>  <b>FILED</b> <b>JUN - 3 2014</b>  <b>STATE BAR COURT CLERK'S OFFICE</b> <b>SAN FRANCISCO</b>
<b>In Pro Per Respondent</b>  <b>Melody K. Cole</b> <b>2500 E. Imperial Highway #201-346</b> <b>Brea, CA 92821</b>  <b>Bar # 207625</b>	<b>Submitted to: Settlement Judge</b>	
<b>In the Matter of:</b> <b>Melody Karen Cole</b>  <b>Bar # 207625</b>  <b>A Member of the State Bar of California</b> <b>(Respondent)</b>	<b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND</b> <b>DISPOSITION AND ORDER APPROVING</b>  <b>PUBLIC REPROVAL</b>  <input type="checkbox"/> <b>PREVIOUS STIPULATION REJECTED</b>	

**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 5, 2000**.
- (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 **10** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

- (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 (public reproof).
  - ☐ Case ineligible for costs (private reproof).
  - ☒ 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.
- (9) The parties understand that:
- (a) ☐ A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
  - (b) ☐ A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
  - (c) ☒ A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

**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 or a separate attachment entitled "Prior Discipline."

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- (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 page 7.**
- (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.
- (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

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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. **See Attachment at page 8.**
- (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.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**Pretrial Stipulation. See Attachment at page 8.**

#### **D. Discipline:**

- (1) ☐ **Private reproof (check applicable conditions, if any, below)**
- (a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) ☐ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).
- or

- (2) ☒ **Public reproof (Check applicable conditions, if any, below)**

#### **E. Conditions Attached to Reproval:**

- (1) ☒ Respondent must comply with the conditions attached to the reproof for a period of **one year**.
- (2) ☒ During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent

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must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reproval.
- (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) ☒ 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 of the effective date of the reproval.
- ☐ No MPRE recommended. Reason: .
- (11) ☐ 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:**

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

IN THE MATTER OF:      MELODY KAREN COLE

CASE NUMBER:            13-O-16387

**FACTS AND CONCLUSIONS OF LAW.**

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

Case No. 13-O-16387 (Complainant: Gabrielle Grundmann)

**FACTS:**

1.      On April 24, 2002, Gabrielle Grundmann ("Grundmann") employed Melody Karen Cole ("Respondent") to represent her in the probate of her deceased husband's estate. Grundmann's step-son was appointed to be the executor of the estate.
2.      On November 6, 2006, a settlement was reached by the beneficiaries, which included provisions to sell the decedent's residence and to distribute 28 percent of the estate to Grundmann. In January 2007, the court-approved realtor told the parties that the residence needed significant repairs to be marketable. The residence was not repaired prior to being listed. It did not sell and was taken off the market when the real estate market collapsed in 2008. It has not been re-listed for sale and remains part of the estate.
3.      On January 30, 2008, Grundmann met with Respondent at Respondent's office, which was also her official State Bar membership address, and obtained a status update. Respondent did not communicate with Grundmann or perform any legal services of value after January 30, 2008.
4.      Between January 2008 and August 2012, Grundmann called Respondent's office and left two messages for Respondent stating her name and telephone number, and requesting a status report. Respondent received the messages, but did not provide a status report or otherwise communicate with Grundmann. During this period, Grundmann also telephoned Respondent two other times, but the phone rang without being answered.
5.      Between January 2008 and August 2012, Grundmann sent one email a year to Respondent identifying herself and requesting a status report. Respondent received the emails, but did not provide a status report or otherwise communicate with Grundmann.
6.      Effective March 1, 2010, Respondent changed her office address and official State Bar membership address. Respondent did not notify Grundmann, opposing counsel, or the Court that she had changed her office address or her official State Bar membership address.

7. Effective August 30, 2010, Respondent vacated her office address and changed her official State Bar membership address. Respondent did not notify Grundmann, opposing counsel, or the Court that she had vacated her office or changed her official State Bar membership address.

8. On October 25, 2011, Grundmann sent a letter addressed to Respondent at the address last known to Grundmann requesting a status report on the probate. The letter was not returned to Grundmann by the U.S. Post Office.

9. On January 31, 2012, Respondent changed her membership status with the State Bar to inactive. Respondent did not inform Grundmann, opposing counsel, or the Court that her State Bar license had become inactive. Respondent voluntarily became an inactive member and ceased practicing law in order to care for her mother; who is elderly and in ill-health.

10. On February 20, 2012, Grundmann drove to Respondent's office at the address last known to Grundmann only to discover that Respondent had vacated that address.

11. Effective January 30, 2013, Respondent changed her official State Bar membership address to what is now her present State Bar membership address. Respondent did not notify Grundmann, opposing counsel, or the Court that she had changed her official State Bar membership address.

12. The decedent's estate has not been distributed, in part, because the decedent's residence has not been sold.

13. By failing to communicate with Grundmann after January 30, 2008, failing to perform any legal services of value regarding the estate after January 30, 2008, changing her office address once and her official State Bar membership address three times after January 30, 2008 without notifying Grundmann, and becoming an inactive member of the State Bar on January 31, 2012 without notifying Grundmann, Respondent constructively abandoned Grundmann effective January 30, 2008.

#### CONCLUSIONS OF LAW:

14. By abandoning Grundmann without notice effective January 30, 2008, Respondent wilfully failed upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to her client in violation of rule 3-700(A)(2), Rules of Professional Conduct.

#### AGGRAVATING CIRCUMSTANCES.

**Harm (Std. 1.5(f)):** Respondent's abandonment of Grundmann caused harm by contributing to the delay in distributing the estate to the beneficiaries, including Grundmann. (*In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14 [attorney's abandonment of clients impacted the clients and court causing harm].)

## MITIGATING CIRCUMSTANCES.

**Family Problems:** At all pertinent times, Respondent's mother was elderly and in ill-health, and Respondent was the primary caretaker. Her responsibilities for her mother's care consumed significant time and emotional energy that she chose to close down her law practice and become an inactive member of the State Bar. (See *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [family difficulties and other stressful emotional difficulties may be considered in mitigation].)

### **Additional Mitigating Circumstances:**

**Pretrial Stipulation:** By entering into this stipulation prior to trial, Respondent has acknowledged her wrongdoing and conserved the time and resources of the State Bar Court and State Bar. (See *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 violation of rule 3-700(A)(2). Standard 2.15 states that reproof to a suspension not to exceed three years is appropriate for violation of rule 3-700(A)(2).

Here, Respondent committed a single act of misconduct by abandoning her client. In aggravation, the abandonment harmed her client by contributing to the delay in distributing the estate to the beneficiaries. In mitigation, Respondent's family problems consumed so much time and emotional energy that she chose to close down her law practice and become an inactive member of the State Bar, and entered into this stipulation acknowledging her wrongdoing and conserving the time and resources of the State Bar



Court and State Bar. Respondent's decision to cease practicing law demonstrates a willingness and ability to conform to her ethical responsibilities in the future, because it demonstrates an objective act to prevent harm to her clients. In light of Respondent's single isolated misconduct, balanced with the aggravating and mitigating circumstances, the purposes of attorney discipline, including protection of the public, maintaining high professional standards, and preserving confidence in the legal system, are served by a relatively low discipline.

Case law also supports the recommended level of discipline. In *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, Van Sloten ceased performing any services for a single client and was found culpable of a single act of failing to perform. In aggravation, Van Sloten failed to appear for the oral argument of the appeal of the referee's decision, which the Supreme Court found demonstrated a lack of concern for the disciplinary process and a failure to appreciate the seriousness of the charges against him. (*Id.* at p. 933.) Van Sloten had no prior record of discipline and the court imposed a six-month stayed suspension with one year of probation. The misconduct in the present case is similar, because Respondent ceased performing services. Unlike the attorney in *Van Sloten*, Respondent has mitigating circumstances that outweigh the aggravating circumstances and has demonstrated a willingness and ability to conform to her ethical responsibilities, and therefore, this matter warrants a lesser discipline than imposed in *Van Sloten*.

Given Respondent's abandonment of a single client, a period of suspension is not necessary to protect the public, courts, and profession. A public reproof consistent with Standard 2.15 will fulfill the purposes of attorney discipline set forth in Standard 1.1.

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

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of May 14, 2014, the prosecution costs in this matter are \$3,497. 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. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of:  
MELODY KAREN COLE

Case number(s):  
13-O-16387

### 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.

5/21/2014  
Date

Melody K. Cole  
Respondent's Signature

Melody K. Cole  
Print Name

5/29/14  
Date

[Signature]  
Respondent's Counsel Signature

Charles T. Calix  
Print Name

5/29/14  
Date

[Signature]  
Deputy Trial Counsel's Signature

Charles T. Calix  
Print Name

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In the Matter of:  
MELODY KAREN COLE

Case Number(s):  
13-O-16387

### REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☒ All court dates in the Hearing Department 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.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

**Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.**

Date

June 3, 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 June 3, 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:

MELODY K. COLE  
2500 E IMPERIAL HWY # 201-346  
BREA, CA 92821

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

CHARLES T. CALIX, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 3, 2014.

  
\_\_\_\_\_  
Mazie Yip  
Case Administrator  
State Bar Court