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**State Bar Court of California
Hearing Department
San Francisco
STAYED SUSPENSION**

Counsel For The State Bar

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San Francisco, CA 94105
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Bar # 85447

Case Number(s):

**13-O-17115
[13-O-17297; 14-O-04354]**

For Court use only
PUBLIC MATTER

FILED

OCT 05 2015

STATE BAR COURT CLERK'S OFFICE
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Counsel For Respondent

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Bar # 132699

Submitted to: **Settlement Judge**

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

In the Matter of:

CHARLES JEFFREY FLETCHER

Bar # 142464

STAYED SUSPENSION; NO ACTUAL SUSPENSION

PREVIOUS STIPULATION REJECTED

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 11, 1989**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **11** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



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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(h) & 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."
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) **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..

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- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See Attachment at page 7.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances

C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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.

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- (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 page 8.**
- (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

No Prior Discipline. See Attachment at page 8.

Pretrial Stipulation. See Attachment at page 8.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **one year**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general 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 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.

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- (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.
- (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: CHARLES JEFFREY FLETCHER

CASE NUMBERS: 13-O-17115 [13-O-17297; 14-O-04354]

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-17115 (Complainant: Joell Reed)

FACTS:

1. On June 5, 2007, Robert Carroll-Jafari employed respondent to perform legal services, namely to file a petition for a writ of habeas corpus and to work with appellate counsel.
2. Between June 7, 2007, and August 9, 2007, respondent accepted a total of \$17,500 from Joell Reed as compensation for representing Robert Carroll-Jafari, without obtaining Carroll-Jafari's informed written consent to receive such compensation.
3. Respondent drafted, but did not file a petition for writ of habeas corpus and did not work with appellate counsel. Respondent did not earn any portion of the advanced fees paid.
4. On August 31, 2009, the client requested an accounting from respondent.
5. On September 8, 2010, the attorney-client relationship was terminated.
6. Respondent did not provide any accounting.
7. Respondent did not fully refund the unearned \$17,500 advance fee until May 2015.

CONCLUSIONS OF LAW:

8. By failing to file a petition for writ of habeas corpus and not working with appellate counsel, respondent recklessly failed to perform with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).
9. By accepting compensation from someone other than the client without the client's informed written consent, respondent willfully violated Rules of Professional Conduct, rule 3-310(F).
10. By not providing an accounting to his client upon termination of employment, respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

11. By not fully refunding unearned advanced fees for almost five years, respondent failed to refund promptly unearned fees upon respondent's termination of employment in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 13-O-17297 (Complainant: Brenda Usher)

FACTS:

12. On September 18, 2013, respondent accepted \$5,000 from Brenda Usher as compensation for representing a client, Genaro Patterson, without obtaining Patterson's informed written consent to receive such compensation.

13. The court would not permit respondent to substitute into *People v. Patterson*.

14. On September 30, 2010, the attorney-client relationship was terminated.

15. On September 30, 2013, Usher requested that respondent refund the unearned advanced fees paid.

16. Not until August 2015, did respondent refund the unearned advanced fees to Usher.

CONCLUSIONS OF LAW:

17. By accepting compensation from someone other than the client without the client's informed written consent, respondent willfully violated Rules of Professional Conduct, rule 3-310(F).

18. By not refunding unearned advanced fees for almost two years, respondent failed to refund promptly unearned fees upon respondent's termination of employment in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 14-O-04354 (Complainant: Natalie Aragon)

FACTS:

19. Between November 2013, and March 4, 2014, respondent accepted a total of \$14,400 from Natalie Aragon as compensation for representing a client, Chase Alan Doulphus in *People v. Chase Alan Doulphus*, Tehama County Superior Court case no. NCR88403, without obtaining his client's informed written consent to receive such compensation.

CONCLUSION OF LAW:

20. By accepting compensation from one other than the client without obtaining the client's informed written consent, respondent willfully violated rule 3-310(F), Rules of Professional Conduct.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing: Standard 1.5(b) provides that "multiple acts of wrongdoing" is an aggravating circumstance. Here, we have seven acts of wrongdoing in three client matters.

MITIGATING CIRCUMSTANCES.

Absence of Prior Record of Discipline: Standard 1.6(a) provides that “absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur” is a mitigating circumstance. Respondent practiced law for seventeen and one-half years before the start of the misconduct in this case. (*In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844, 859 [17 years of practice without discipline mitigating].)

Good Character: Standard 1.6(f) provides that “extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct” is a mitigating circumstance. Respondent has provided letters from four members of the general community – including his wife and his pastor -- attesting to his good character and their awareness of his misconduct. Three members of the Bar also attest to respondent’s good character and evidence awareness of respondent’s misconduct.

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a stipulation with the Office of Chief Trial Counsel prior to trial in this matter, thereby saving the State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [mitigative credit given for entering into 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 Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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

In this matter, respondent committed seven acts of professional misconduct in three client matters:

- failing to perform with competence
- accepting fees from a non-client without a waiver [three counts]
- failing to render an accounting
- failure to promptly refund an unearned advance fee [two counts]

Standard 1.7(a) requires that where an attorney “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 potentially applicable to respondent’s misconduct – actual suspension – is found in standard 2.19 which provides: “Suspension not to exceed three years or reproof is appropriate for a violation of a provision of the Rules of Professional Conduct not specified in these Standards.” Standard 2.19 applies to respondent’s multiple violations of rule 3-310(F), accepting fees from a non-client without a waiver.

Here, respondent’s misconduct is mitigated by respondent’s 17 ½ years practice with no prior discipline at the time the misconduct occurred, cooperation with the State Bar by entering into this pretrial stipulation, and evidence of his good character attested to by references in the general and legal communities.

Case law is instructive. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the attorney who had practiced for 17 years without discipline, failed to perform with competence in his representation of a client on death row, violated Supreme Court orders, and failed to report a judicial sanction. Riordan received a six-month stayed suspension.

As stated above, the primary purposes of discipline are “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.” Balancing the aggravating circumstance (multiple acts of misconduct) against several mitigating circumstance (lack of prior discipline, pretrial stipulation, and good character), discipline within standard 2.19’s range is appropriate. Thus, a one-year stayed suspension with a two-year period of probation, attendance at Ethics School, and passage of the MPRE, should adequately serve the purposes of discipline.

EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION (“MCLE”) CREDIT.

Respondent may not receive MCLE credit for completion of State Bar Ethics School, ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violation in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
13-O-17114	Five	Business and Professions Code, section 6106

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of September 21, 2015, the prosecution costs in this matter are \$9,162. 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.

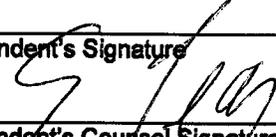
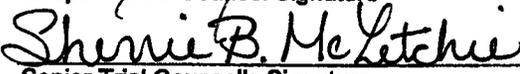
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In the Matter of:
CHARLES JEFFREY FLETCHER

Case number(s): 13-O-17115
[13-O-17297; 14-O-04354]

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.

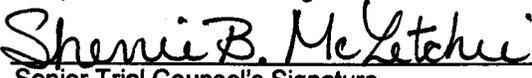
Date	Respondent's Signature	Charles Jeffrey Fletcher
9/23/15		Print Name
Date	Respondent's Counsel Signature	Edward O. Lear
9/24/15		Print Name
Date	Senior Trial Counsel's Signature	Sherrie B. McLetchie
		Print Name

(Do not write above this line.)

In the Matter of: CHARLES JEFFREY FLETCHER	Case number(s):13-O-17115 [13-O-17297; 14-O-04354]
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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>9/22/15</u> Date	 Respondent's Signature	<u>Charles Jeffrey Fletcher</u> Print Name
<u> </u> Date	<u> </u> Respondent's Counsel Signature	<u>Edward O. Lear</u> Print Name
<u>9/24/15</u> Date	 Senior Trial Counsel's Signature	<u>Sherrie B. McLetchie</u> Print Name

(Do not write above this line.)

In the Matter of: CHARLES JEFFREY FLETCHER	Case Number(s): 13-O-17115 [13-O-17297; 14-O-04354]
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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.)**

Oct 5, 2015
Date



LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, On October 5, 2015, 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:

EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045

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

Sherrie B. McLetchie, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 5, 2015.



Laurretta Cramer
Case Administrator
State Bar Court