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State Bar Court of California Hearing Department Los Angeles DISBARMENT		
<p>Counsel For The State Bar</p> <p>Drew Massey Deputy Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017-2525 Tel: (213) 765-1204</p> <p>Bar # 244350</p>	<p>Case Number(s): 14-O-00919-PEM</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 1.2em;">PUBLIC MATTER</p> <p style="text-align: center; font-size: 1.5em;">FILED</p> <p style="text-align: center; font-size: 1.2em;">DEC 05 2014</p> <p style="text-align: center; font-size: 0.8em;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Brandon Powell 1744 W. Red Cloud Circle Saint George, UT 84770 Tel: (206) 713-9194</p> <p>Bar # 167740</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: BRANDON BURNHAM POWELL</p> <p>Bar # 167740</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 **December 16, 1993**.
- (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 (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."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."



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- (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 **12-C-15745, 12-C-15746, 13-C-10023 (consolidated) See attachment pp. 7-8 for further information regarding the prior discipline.**
 - (b) Date prior discipline effective **September 21, 2013**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **The prior discipline involved criminal conviction matters pursuant to Business and Professions Code sections 6101 and 6102. Respondent was convicted of, inter alia, possession of controlled substances and paraphernalia. Although the facts and circumstances did not involve moral turpitude, they did involve other misconduct warranting discipline.**
 - (d) Degree of prior discipline **A three year period of suspension, stayed, and a three year period of probation with conditions including a two year actual suspension (and until respondent provides proof of rehabilitation, fitness to practice, and learning in the law) and substance abuse conditions.**
 - (e) If respondent has two or more incidents of prior discipline, use space provided below:
- (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.

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- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (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 7.**
- (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.

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- (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, page 9.

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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:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: BRANDON BURNHAM POWELL

CASE NUMBER: 14-O-00919

FACTS AND CONCLUSIONS OF LAW.

Respondent Brandon Burnham Powell ("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. 14-O-00919 (Probation Matter)

FACTS:

1. Via Supreme Court Order S211462 filed August 22, 2013 and effective September 21, 2013, respondent received professional discipline.
2. Respondent's discipline consisted of, inter alia, suspension from the practice of law for three years, with the execution of that suspension stayed. Discipline also included a three year period of probation with conditions.
3. Respondent has failed to comply with the following, each of which was an express condition of probation:
 - a) Respondent failed to comply with the provisions of the State Bar Act by failing to maintain a current address for State Bar purposes as required by section 6002.1 and by failing to comply with conditions of probation as required by section 6068(k).
 - b) Respondent did not timely contact the Office of Probation by October 21, 2013 as required. Instead, Respondent contacted the Office of Probation on October 28, 2013.
 - c) Because respondent's prior misconduct involved controlled substances, respondent was required to cause a licensed laboratory to submit to the Office of Probation, on or before the tenth of each month, lab reports containing an analysis of respondent's blood and/or urine. The submission of reports was to commence on October 10, 2013. No such reports were submitted for October through December 2013 or for January through October 2014.
 - d) Because respondent's prior misconduct involved controlled substances, respondent was required to submit to the Office of Probation, on or before the tenth of each month, proof that he attended at least eight meetings per month of an abstinence based self-help group (such as Narcotics Anonymous). Respondent was required to submit proof monthly beginning November 10, 2013. Respondent did not submit any such proof for November or December 2013, nor for January through October 2014.

- e) Respondent was required to submit to the Office of Probation on each January 10, April 10, July 10, and October 10, written quarterly reports in which respondent was required to state under penalty of perjury whether he had complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding quarter. Respondent failed to submit to the Office of Probation a quarterly report for the period from September 21 through December 31, 2013 which was due on January 10, 2014.
- f) Respondent failed to submit to the Office of Probation a quarterly report for the period from January 1, 2014 through March 31, 2014 which was due on April 10, 2014.
- g) Respondent failed to submit to the Office of Probation a quarterly report for the period from April 1, 2014 through June 30, 2014 which was due on July 10, 2014.
- h) Respondent failed to submit to the Office of Probation a quarterly report for the period from July 1, 2014 through September 30, 2014 which was due on October 10, 2014.
- i) Respondent failed to report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar all changes of information, including current office address and telephone number, within ten days of any change.

4. After belatedly contacting the Office of Probation on October 28, 2013, respondent failed to comply with any of the conditions of his disciplinary probation.

CONCLUSIONS OF LAW:

5. By failing to timely contact the Office of Probation, failing to submit monthly lab reports, failing to submit monthly proof of attendance at an abstinence based self-help group, failing to submit quarterly reports, and failing to report a change in address, respondent failed to comply with conditions of his disciplinary probation, in willful violation of Business and Professions Code section 6068(k).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)). Respondent failed to comply with nearly all conditions of probation. This includes the failure to file no fewer than thirteen monthly lab reports, twelve attendance reports, and four quarterly reports. Multiple acts of wrongdoing are an aggravating factor. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168.)

Prior Record of Discipline (Std. 1.5(a)). Respondent has one prior record of discipline in consolidated case numbers 12-C-15745, 12-C-15746, and 12-C-10023 involving respondent's convictions for possession of a controlled substance and driving under the influence.

12-C-10023: On October 14, 2005, respondent plead guilty to driving with a blood alcohol concentration ("BAC") of 0.08%, a misdemeanor, including a specific allegation that he had a BAC of over 0.20%. His BAC was tested at 0.24%. He also plead guilty to driving when the privilege was suspended or revoked, a misdemeanor. The acts relating to the conviction took place on December 16, 2004.

Imposition of sentence was suspended for three years pending successful completion of probation. Among other conditions of probation, Respondent was ordered to serve sixty days in county jail and complete an eighteen-month multiple offender program.

12-C-15745: On October 26, 2009, respondent was convicted of felony possession of hydrocone which is a controlled substance, after officers found twelve pills on his person. He did not have a valid prescription. Respondent was also found with 2.7 grams of marijuana and convicted of possession of 28.5 grams or less of marijuana, a misdemeanor. On April 30, 2007, the police responded to a potential burglary call. However, it was respondent moving furniture out of his own apartment. After verifying his identity, the officers noted an existing arrest warrant, took him into custody, and discovered the controlled substances pursuant to a search of his person.

Respondent was placed on probation for three years and ordered to complete the Penal Code section 1210 drug treatment program. Respondent violated probation by failing to timely enroll in the drug treatment program. He was ordered to attend three Narcotics Anonymous meetings per week. He violated probation a second time based on a later conviction (discussed below) and was ordered to serve sixty days in county jail. He was found in violation of probation a third time and was ordered to serve 90 days in jail.

12-C-15746: On April 28, 2011, respondent was convicted of possession of controlled substance paraphernalia, a misdemeanor, and driving when privilege was suspended or revoked for driving under the influence, a misdemeanor. On April 8, 2011, respondent was detained at a traffic stop. Officers discovered a light bulb that had been modified into a smoking pipe for methamphetamine. The light bulb also contained trace amounts of that substance. Police also discovered respondent's vehicle was displaying Washington state license plates that did not correspond to the VIN. No charges were brought based on the mismatched license plate.

Probation was denied and Respondent was sentenced to serve sixty days in jail concurrent with the conviction in the above matter.

The facts and circumstances surrounding respondent's three convictions did not involve moral turpitude but did involve misconduct warranting discipline.

Respondent entered into a stipulation resolving the above matters. Effective September 21, 2013, respondent was suspended for three years, stayed, and placed on three years of probation with conditions including actual suspension for two years and until respondent showed proof of rehabilitation, fitness to practice, and learning in the law in conformity with Standard 1.4(c)(ii).¹

In mitigation, respondent had no prior record of discipline and cooperated with the State Bar by entering into a stipulation. In aggravation, respondent displayed indifference and a pattern of misconduct. Also in aggravation, respondent had previously been convicted of similar offenses. Those offenses included a July 11, 2007 conviction of one felony for possession of a controlled substance – methamphetamine – and three misdemeanors for possession of controlled substance paraphernalia, possession of 28.5 grams or less of marijuana, and driving without a license. In a second previous offense, respondent was convicted on June 15, 1998 of alcohol-related reckless driving, a misdemeanor.

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¹ Standard 1.4(c)(ii) has since been renumbered as 1.2(c)(1).

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation. Respondent admitted to the misconduct and entered into this stipulation fully resolving this matter after the filing of disciplinary charges. Respondent's cooperation at this stage will save the State Bar resources and time. Respondent's cooperation in this regard is a mitigating factor in this resolution (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigation 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; hereinafter "Standards.") 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, Standard 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. (Standard 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Standard 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. (Standards 1.7(b)-(c).)

Standard 2.10 applies to respondent's failure to comply with conditions attached to discipline. Standard 2.10 states that actual suspension is appropriate with the degree of sanction depending on the nature of the condition violated and the member's unwillingness or inability to comply with disciplinary orders.

Additionally, Standard 1.8(a) applies to this matter. Where a member has one prior record of discipline, the sanction must be greater than the previously imposed discipline unless the prior sanction was remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust. Respondent's prior is not remote and his previous misconduct was serious. Therefore, any sanction must be more severe than the two years of actual suspension administered in the prior misconduct.

Taking both Standards 2.10 and 1.8(a) into consideration, the Standards alone (without considering aggravation or mitigation) would require an actual suspension of greater than two years. However,

given the already significant actual suspension (two years) as well as respondent's inability or unwillingness to comply with conditions of probation, further suspension or probation is unlikely to confer additional public protection.

“[T]he greatest amount of discipline is warranted for violations of probation which show a breach of a condition of probation significantly related to the misconduct for which probation was given...” (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653.) Here, respondent's prior misconduct involved his possession and use of illicit substances. For this reason, specific requirements were put in place in his probation to address the substance abuse. Respondent's failure to abide by these conditions is significantly related, highly concerning, and requires substantial discipline.

The Review Department has concluded, “that [a] respondent's continued unwillingness or inability to comply with the conditions of probation imposed on him by a Supreme Court order ‘demonstrates a lapse of character and a disrespect for the legal system that directly relate to an attorney's fitness to practice law and serve as an officer of the court.’” (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530 *citing In re Kelley* (1990) 52 Cal.3d 487, 495.) Further, where a member fails to comply with the “very first steps” of probation, it represents a “failure to even begin to take steps to rehabilitate himself.” (*In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 78.)

Given respondent's complete disregard for his probation requirements, and the attendant disregard for the Court order imposing those requirements, a sanction of actual suspension is unlikely to sufficiently protect the public. Respondent hasn't “even [begun] to take steps to rehabilitate himself.” Further or lengthened probation is likely to go similarly unheeded. Therefore, the aggravating circumstances require a sanction greater than Standards 1.8(a) or 2.10 might otherwise require.

In this instance, disbarment is necessary to protect the public, the courts, and the legal profession; maintain the highest professional standards; and preserve public confidence in the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 15, 2014, the prosecution costs in this matter are estimated at \$3,497.00. 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: BRANDON BURNHAM POWELL	Case number(s): 14-O-00919-PEM
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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.

November 2, 2014 Brandon Powell Brandon Powell
Date Respondent's Signature Print Name

11-13-14 [Signature] Drew Massey
Date Deputy Trial Counsel's Signature Print Name

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In the Matter of: BRANDON BURNHAM POWELL	Case Number(s): 14-O-00919-PEM
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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.

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 BRANDON BURNHAM POWELL 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.

Dec. 5, 2014
Date

Pat E. McElroy
PAT E. McELROY
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 December 5, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

BRANDON BURNHAM POWELL
1744 W RED CLOUD CIR
SAINT GEORGE, UT 84770

- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- by overnight mail at , California, addressed as follows:


- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Drew Massey, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 5, 2014.


George Hue
Case Administrator
State Bar Court