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State Bar Court of California Hearing Department Los Angeles REPROVAL		
<p>Counsel For The State Bar</p> <p>R. Kevin Bucher Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017-2515 (213)765-1630</p> <p>Bar # 132003</p>	<p>Case Number(s): 14-O-01540</p>	<p>For Court use only</p> <p style="text-align: center;">FILED</p> <p style="text-align: center;">DEC 08 2014 </p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>David C. Carr Law Offices of David C. Carr 525 B Street, Suite 1500 San Diego, CA 92101 (619)696-0526</p> <p>Bar # 124510</p>	PUBLIC MATTER	
<p>In the Matter of: Alan Joseph Carnegie</p> <p>Bar # 119579</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 10, 1985**.
- (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."



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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 (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: (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.
- (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.
- (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, page 7.**
- (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, page 7.

Pro Bono Work - see attachment, page 8.

Family problems/Emotional Difficulties - see attachment, page 8.

Pre-trial Stipulation - see attachment, page 8.

Remorse/Recognition of Wrongdoing - see attachment, 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 Reproof:

- (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 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 reproof.
- (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 reproof.

No MPRE recommended. Reason: **The misconduct and level of discipline do not rise to a level requiring taking and passage of the MPRE.**

- (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: ALAN JOSEPH CARNEGIE

CASE NUMBER: 14-O-01540

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. 14-O-01684 (State Bar Investigation)

FACTS:

1. As a member of the State Bar, Respondent was required to complete 25 hours of minimum continuing legal education ("MCLE") during the period commencing on or about February 1, 2010, and ending on or about January 31, 2013 (the "compliance period").

2. On January 30, 2013, Respondent reported under penalty of perjury to the State Bar that he was in compliance with the MCLE requirements, and, in particular, that he had completed his MCLE during the compliance period.

3. Respondent believed he had completed his MCLE studies during the compliance period, but he failed to check his records to assure that he had done so. In fact, Respondent had not completed any of the required MCLE studies during the compliance period.

4. When Respondent reported to the State Bar that he was in compliance with the MCLE requirements, he was grossly negligent in not knowing that he was not in compliance with the MCLE requirements.

CONCLUSIONS OF LAW:

5. By reporting under penalty of perjury to the State Bar that he was in compliance with the MCLE requirements when he was grossly negligent in not knowing that he was not in compliance with the MCLE requirements, Respondent committed an act involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code, section 6106.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent was admitted to practice on December 10, 1985. Although Respondent's misconduct is serious, he will be entitled to significant mitigative credit for over 27 years of discipline free practice. (*Friedman v. State Bar* (1990) 51 Cal.3d 235, 245.)

Good Character (Std. 1.6(f)): Respondent has presented nine declarations from witnesses, attorneys and non-attorneys, including the Rabbi from his synagogue, and his former managing partner at Daniels, Fine, all of whom are aware of Respondent's misconduct, and all of whom attest to his exemplary character and high legal standards.

Pro Bono Work: Respondent has provided evidence of Pro Bono service with his local synagogue, the Los Angeles Superior Court, the California Business Industry Foundation, Cal State Long Beach Expert witness Certificate Program, and the Chinese-American Association of Construction Professionals. (*Calvert v. State Bar* (1991) 54 Cal.3d 765 [community service and pro bon activities are mitigating factors that may be entitled to considerable weight].)

Family Problems/ Emotional Difficulties: During the compliance period, Respondent was consumed with the end of his 27 year marriage, including the receiving of anonymous communications regarding his wife's infidelity. He was also caring for his elderly, legally blind mother, who was undergoing multiple surgeries with a retinal specialist. Just prior to the reporting he had a personal cancer scare, though the mass turned out to be benign. All of the forgoing provided distraction, causing emotional difficulties which directly contributed to his falsely reporting that he had completed his MCLE hours. Most of his personal problems have resolved and will not lead to similar misconduct in the future. (See *In the Matter of Spaith* (1990) 3 Cal. State Bar Ct. Rptr. 511 [marital problems and similar difficulties can be mitigating if they are extreme and are directly responsible for the misconduct].)

Pre-trial Stipulation: Respondent admitted to the misconduct and entered into this stipulation prior to trial to resolve this matter. Respondent's cooperation by entering into this stipulation prior to trial has saved the State Bar significant resources and time. (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].)

Remorse/Recognition of Wrongdoing: Prompt objective steps, demonstrating remorse and recognition of the wrongdoing is entitled to mitigation. Respondent acknowledges he was remiss in maintaining and checking his MCLE attendance records, and has changed his record keeping practices to make sure it never happens again, including utilizing the State Bar's online MCLE tracking tool. (See *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. ____, 2014 WL 3748590.)

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).)

Standard 2.7 provides that disbarment or suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the conduct harmed or misled the victim and related to the practice of law.

In the instant case, although there was no client in this matter, the State Bar, and in a more general sense the public, can be seen as victims. That is, the purpose of California’s MCLE program is to protect consumers by enhancing the competency of attorneys practicing law in this State. Respondent’s failure to comply with MCLE harms both the State Bar’s ability to protect the public from incompetent attorneys and the public’s assurance that attorneys will remain competent after admission/licensure. In addition, it is significant that Respondent’s misrepresentation to the State Bar would never have come to light but for the fact that Respondent was randomly chosen to be a part of the MCLE audit undertaken by Membership Services.

Further, a misrepresentation is an act of moral turpitude which is misconduct of the greatest magnitude because it negates honesty and truth. “Honesty is one of the most fundamental rules of ethics for attorneys.” (*Gold v. State Bar* (1989) 49 Cal.3d 908, 914 (citations omitted)). Whether made to a client or to a public agency like the State Bar, a misrepresentation undermines the integrity of the judicial process by introducing false information where only facts and the law should be determinative. Misrepresentations are no less egregious when made to a public agency than when made to an individual client. (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 93). In this matter, Respondent made an affirmation that he had completed his MCLE obligations for the February 1, 2010 through January 31, 2013 compliance period when such an affirmation was false.

Finally, Respondent’s misconduct was directly related to Respondent’s practice of law in that compliance with the requirements of MCLE is an affirmative obligation of all licensed attorneys. MCLE compliance is important because in addition to the policy objectives described above regarding assuring attorney competence and protecting the public.

However, in addition to an analysis of Standard 2.7, further consideration must be given to any aggravating or mitigating circumstances which may justify a greater or lesser level of discipline than indicated by Standard 2.3. In this matter, Respondent has presented evidence of compelling mitigating circumstances contributing to his misconduct, without counter-balancing aggravation. While there is no question that Respondent was culpable in representing under penalty of perjury that he was in compliance with his MCLE requirements, when he was in fact not in compliance, given the mitigating circumstances, including his 27 years of discipline free practice, his good character, and his personal problems, which have for the most part resolved, his misconduct was aberrational. Accordingly,

deviation from the level of discipline provided by the standards is appropriate. A public reproof for a period of one year, with conditions including attendance at ethics school, is appropriate to protect the public, the courts and the legal profession.

The level of discipline is supported by case law. ((See *In the Matter of Yee* (Review Dept. 2014)5 Cal. State Bar Ct. Rptr. ____, 2014 WL 3748590 [Public reproof appropriate in an MCLE where misconduct was the result of a mistake, and compelling mitigation outweighs aggravation].)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of November 12, 2014, the prosecution costs in this matter are \$3497. 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

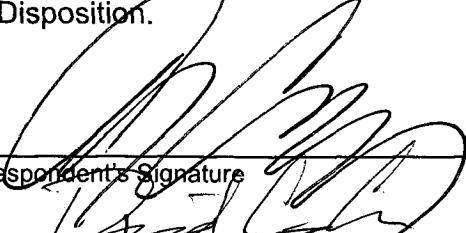
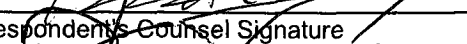
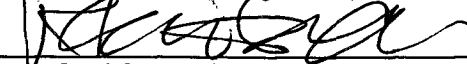
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of ALAN JOSEPH CARNEGIE	Case number(s): 14-O-01540
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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 Fact, Conclusions of Law and Disposition.

<u>11-13-2014</u> Date	 Respondent's Signature	<u>ALAN JOSEPH CARNEGIE</u> Print Name
<u>11/14/2014</u> Date	 Respondent's Counsel Signature	<u>DAVID C. CARR</u> Print Name
<u>11-18-04</u> Date	 Deputy Trial Counsel's Signature	<u>R. KEVIN BUCHER</u> Print Name

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In the Matter of: ALAN JOSEPH CARNEGIE	Case Number(s): 14-O-01540
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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.

DECEMBER 5, 2014
Date


GEORGE E. SCOTT, JUDGE PRO TEM
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 8, 2014, I deposited a true copy of the following document(s):

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

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

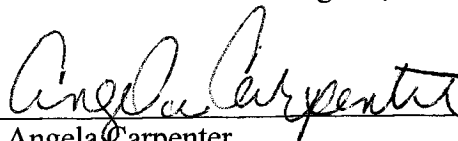
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID C. CARR
LAW OFFICE OF DAVID CAMERON CARR PLC
525 B ST STE 1500
SAN DIEGO, CA 92101

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

RONALD K. BUCHER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 8, 2014.



Angela Carpenter
Case Administrator
State Bar Court