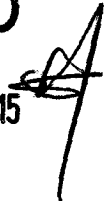


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<b>State Bar Court of California Hearing Department San Francisco DISBARMENT</b>		
<b>Counsel For The State Bar</b>  <b>Susan I. Kagan</b> <b>Senior Trial Counsel</b> <b>180 Howard St.</b> <b>San Francisco, CA 94105</b> <b>(415) 538-2037</b>  Bar # 214209	<b>Case Number(s):</b> <b>14-O-02467-PEM</b>	<b>For Court use only</b>  <b>PUBLIC MATTER</b>  <b>FILED</b>  <b>MAY 08 2015</b>   <b>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</b>
<b>Counsel For Respondent</b>  <b>Christopher W. Bayuk</b> <b>5170 Golden Foothills Pkwy</b> <b>El Dorado Hills, CA 95762</b> <b>(619) 232-7945</b>  Bar # 121751	<b>Submitted to: Settlement Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</b>  <b>DISBARMENT</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter of:</b> <b>HOLLY S. BURGESS</b>  Bar # 104757  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 3, 1982.
- (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."

(Effective January 1, 2014)



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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 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
  - (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:
- (2)  Dishonesty: Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  Trust Violation: Trust funds or property were involved and respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice. See Attachment at p. 8.
- (5)  Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(Do not write above this line.)

- (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 at p. 9.**
- (8)  **Restitution:** Respondent failed to make restitution. **See Attachment at p. 9.**
- (9)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted with a good faith belief that was honestly held and reasonable.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9)  **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.

(Do not write above this line.)

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(13)  No mitigating circumstances are involved.

**Additional mitigating circumstances:**

**No Prior Discipline. See Attachment at p. 9.**  
**Pretrial Stipulation. See Attachment at p. 9.**

**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 **Sharon and Clyde Horrocks** in the amount of \$ **65,000** plus 10 percent interest per year from **February 4, 2013**. If the Client Security Fund has reimbursed **Sharon and Clyde Horrocks** 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 **30** 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:                    HOLLY S. BURGESS

CASE NUMBER:                        14-O-02467-PEM

**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. 14-O-02467 (Complainants: Sharon and Clyde Horrocks)**

**FACTS:**

1. At all relevant times herein, respondent maintained a client trust account at Bank of the West (“trust account”).

2. On October 12, 2011, Sharon and Clyde Horrocks (“the Horrocks”) hired respondent to represent them in a wrongful foreclosure matter. On the same date, the parties entered into a written fee agreement. Pursuant to the fee agreement, the Horrocks paid respondent fees in monthly installments during the pendency of the representation, for a total of \$19,767.78.

3. On January 6, 2012, respondent filed a complaint on behalf of the Horrocks in *Horrocks v. Recon Trust Company, N.A., Bank of America, N.A., et al.*, Placer County Superior Court Case No. SCV30381 (“civil matter”).

4. On December 12, 2012, the civil matter settled. Pursuant to the terms of the settlement, the Horrocks were to receive \$95,000 from the defendant.

5. On January 23, 2013, the defendant in the civil matter sent respondent a settlement check in the amount of \$95,000. On February 4, 2013, respondent deposited the \$95,000 settlement check into her trust account.

6. On February 5, 2013, respondent withdrew \$15,458 from the \$95,000. At no time did respondent notify the Horrocks that she withdrew \$15,458 from the \$95,000. After the withdrawal, respondent maintained \$79,542 of the \$95,000 in her trust account on behalf of the Horrocks.

7. On February 12, 2013, respondent directed an employee to send an email to the Horrocks. In the email, respondent notified the Horrocks that she was claiming \$77,308.04 as fees from the \$95,000. The email was silent about the \$15,458 that was withdrawn on February 5, 2013.

8. Upon receipt of the email, the Horrocks immediately notified respondent that they disputed her entitlement to fees. On February 15, 2013, the Horrocks sent an email to respondent, stating: “And make sure not to disburse any of the settlement funds until this is resolved. We do not agree at all with

what you are demanding.” Respondent received the email, but did not return the \$15,458 to the trust account.

9. Thereafter, the Horrocks sought the counsel of an attorney friend to assist them with their dealings with respondent. The attorney provided numerous hours of pro bono legal assistance to the Horrocks.

10. In March 2013, the parties agreed to participate in binding fee arbitration. The parties also agreed to a disbursement of undisputed funds from the \$95,000. On March 26, 2013, the parties entered into a written Interim Agreement Re: Disbursement of Settlement Monies (“Interim Agreement”) regarding the disbursement of undisputed funds, as follows:

1. Law Firm will disburse the sum of \$15,000 to the Horrocks;
2. Law Firm will disburse the sum of \$15,000 to Law Firm;
3. Law Firm agrees to hold the remaining \$65,000 of the \$95,000 settlement monies in its trust account pending results of the fee arbitration (and/or any appropriate appeal thereof)

11. Respondent intentionally misrepresented that she continued to maintain \$95,000 in her trust account. In truth and in fact, respondent knew that she had already issued \$15,458 to herself from the \$95,000 on February 5, 2013, leaving a balance of only \$79,542.

12. Pursuant to the Interim Agreement, on March 26, 2013, respondent sent the Horrocks a trust account check in the amount of \$15,000. After the \$15,000 payment, respondent maintained \$64,542 of the \$95,000 in her trust account on behalf of the Horrocks.

13. On May 15, 2013, respondent made a cash withdrawal of \$4,000 from her trust account from the funds held on behalf of the Horrocks, leaving a total balance of \$61,002.25 in her trust account. Of the \$61,002.25, \$60,542 represented the funds held on behalf of the Horrocks from the \$95,000 deposit.

14. On May 23, 2013, respondent directed an employee to withdraw \$60,887.25 from respondent’s trust account. Respondent directed her employee to use the funds to purchase two cashier’s checks, as follows:

1. Check number 1001259119 in the amount of \$30,000, made payable to respondent’s employee; and
2. Check number 1001259124 in the amount of \$30,887.25, made payable to respondent’s law firm.

15. Respondent was charged \$15 for the cashier’s checks, for a total withdrawal of \$60,902.25. As of May 31, 2013, respondent had misappropriated the \$65,000 she promised to maintain in her trust account on behalf of the Horrocks pursuant to the Interim Agreement.

16. On October 4, 2013, the parties participated in mandatory fee arbitration. Respondent made a misrepresentation at the fee arbitration regarding the amount held in her trust account.

17. On November 8, 2013, an arbitration decision issued. The arbitration panel determined that respondent’s fee agreement was ambiguous and found in favor of the Horrocks. The arbitration panel found respondent was entitled to a total fee of \$34,767.78, which included the \$19,767.78 paid by the

Horrocks in installments and the \$15,000 paid to respondent pursuant to the Interim Agreement. [The arbitration panel was unaware of the \$15,458 withdrawal on February 5, 2003.] Respondent was required to disburse \$65,000 to the Horrocks. Respondent received the award and did not take any action to vacate the award.

18. Beginning in November 2013, the Horrocks and their counsel made several demands for payment of the \$65,000 pursuant to the arbitration award. Respondent received the demands, but failed to pay any funds to the Horrocks.

19. On December 20, 2013, counsel for the Horrocks sent respondent an email requesting confirmation that the \$65,000 remained in respondent's trust account. Respondent received the email, but failed to respond to it.

20. On February 12, 2014, respondent sent a letter to the Horrocks' counsel, offering to enter into a payment plan for the \$65,000, to be paid at a rate of \$750 per month with a bi-annual payment of \$2,500. The Horrocks rejected the offer.

21. On February 28, 2014, the Horrocks filed a complaint against respondent with the State Bar.

22. On April 17, 2014, respondent sent a letter to the State Bar responding to the allegations of misconduct. In the letter, respondent stated: "I have not distributed the \$65,000 to the Horrocks as it was needed to pay bills of the firm, including rent and business loans to the firm."

23. To date, respondent has not paid the Horrocks any portion of the \$65,000 in misappropriated funds.

#### CONCLUSIONS OF LAW:

24. By failing to maintain \$65,000 on behalf of the Horrocks in respondent's client trust account, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a client trust account in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

25. By intentionally misappropriating \$65,000 of the Horrocks' funds, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106 of the Business and Professions Code.

26. By making a misrepresentation in the Interim Agreement that respondent continued to maintain \$95,000 in her trust account on behalf of the Horrocks when respondent knew the statement to be false and by making a misrepresentation at the fee arbitration when respondent knew the statement to be false, respondent committed acts involving moral turpitude, dishonesty or corruption, in willful violation of section 6106 of the Business and Professions Code.

#### AGGRAVATING CIRCUMSTANCES.

**Harm (Std. 1.5(f)):** Respondent's misappropriation deprived the clients of the use of their funds, causing significant harm to the clients.



**Multiple Acts of Misconduct (Std. 1.5(b)):** Respondent's misappropriation and misrepresentations demonstrate multiple acts of wrongdoing.

**Failure to Make Restitution (Std. 1.5(i)):** To date, respondent has failed to make restitution of the misappropriated funds.

#### **MITIGATING CIRCUMSTANCES.**

**No Prior Discipline:** Although respondent's misconduct is serious, she is entitled to mitigation for having practice law for approximately 30 years without discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

**Pretrial Stipulation:** Respondent is entitled to mitigation for entering into a stipulation with the Office of Chief Trial Counsel prior to trial in the above referenced disciplinary matter, thereby saving State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source).

The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of high professional standards; and preservation of public confidence in the legal profession. (*In re Morse* (1995) 11 Cal.4<sup>th</sup> 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.4<sup>th</sup> 81, 92, quoting *In re Brown* (1995) 12 Cal.4<sup>th</sup> 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 discipline 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 intentionally misappropriated approximately \$65,000 from her clients and has not repaid any portion of the misappropriated funds. Standard 2.1(a) applies to intentional misappropriations and provides: "Disbarment is appropriate for intentional or dishonest

misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case actual suspension of one year is appropriate.”

The misappropriated amount is not insignificantly small and there is no evidence that the most compelling circumstances clearly predominate. In aggravation, respondent committed multiple acts of misconduct, caused significant harm to the clients by depriving them of their funds and has failed to make restitution. In mitigation, respondent has no prior record of discipline and is entitled to mitigation for entering into a pretrial stipulation. In light of the serious and ongoing nature of respondent’s misconduct, disbarment is warranted.

Case law also supports disbarment for intentional misappropriations, even when the attorney has no prior record of discipline. (See *Chang v. State Bar* (1989) 49 Cal.3d 114 [disbarment for misappropriation of over \$7,000; no prior record of discipline]; *Kelly v. State Bar* (1988) 45 Cal.3d 649 [disbarment for misappropriation of approximately \$20,000; no prior record of discipline]; *In re Abbott* (1977) 19 Cal.3d 249 [disbarment for misappropriation of over \$29,000; no prior record of discipline]; *In the Matter of Spaitth* (Review Dept. 1996) 3 Cal.State Bar Ct.Rptr. 511 [disbarment for misappropriation of approximately \$40,000 in one client matter; no prior record of discipline]; *In the Matter of Keuker* (Review Dept. 1991) 1 Cal.State Bar Ct.Rptr. 583 [disbarment for misappropriation of approximately \$66,000 in one client matter; no prior record of discipline].)

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


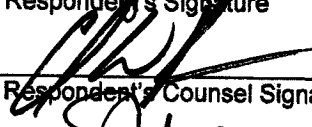

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 1, 2015, the prosecution costs in this matter are \$3,497. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: HOLLY S. BURGESS	Case number(s): 14-O-02467-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.

<u>4/3/2015</u> Date	<u></u> Respondent's Signature	<u>Holly S. Burgess</u> Print Name
<u>4/1/2015</u> Date	<u></u> Respondent's Counsel Signature	<u>Christopher W. Bayuk</u> Print Name
<u>4/13/15</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Susan I. Kagan</u> Print Name

(Do not write above this line.)

In the Matter of:  
HOLLY S. BURGESS

Case Number(s):  
14-O-02467-PEM

### 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 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.

Date

May 8, 2015

Jug AM  
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 May 8, 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:

CHRISTOPHER WEBB BAYUK  
BAYUK & ASSOCIATES INC  
5170 GOLDEN FOOTHILLS PKWY  
EL DORADO HILLS, CA 95762

- 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:

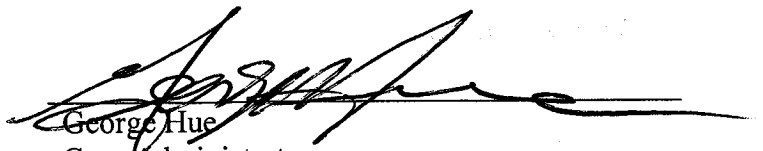
- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- 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:

Susan I. Kagan, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 8, 2015.

  
George Hue  
Case Administrator  
State Bar Court