

## STATE BAR COURT OF CALIFORNIA

STATE BAR COURT CLERK'S OFFICE  
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## HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>14-O-03054-LMA</b>
	)	(14-O-03055; 14-O-03268)
<b>RAAQIM A.S. KNIGHT,</b>	)	
	)	<b>DECISION</b>
<b>Member No. 217630,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**Introduction**<sup>1</sup>

In this contested disciplinary matter, respondent **Raaqim A.S. Knight** is charged with ten counts of misconduct in three client matters. The present charges emanate from the fact that Respondent, who was experiencing marital and financial difficulties, simply disappeared in late 2013, abandoning his clients and forcing them to seek other counsel.

Having considered the facts and the law, the court finds Respondent culpable on nine of the ten counts of misconduct. Among other things, the court recommends that Respondent be suspended for a period of ninety days.

**Significant Procedural History**

The State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) against Respondent on December 9, 2014. After Respondent initially failed to file a response to the NDC, his default was entered on February 5, 2015.

<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.



Respondent filed a motion to set aside the default three months later, on May 6, 2015. Over the objection of the State Bar, that motion was granted on June 8, 2015, and Respondent filed his response that same day. Trial dates were set for June 30, 2015.

The State Bar was represented by Deputy Trial Counsel Hugh G. Radigan. Edward O. Lear represented Respondent. A three-day trial was held on June 30, July 14, and August 24, 2015.<sup>2</sup> On July 14, 2015, the parties entered into a fairly extensive stipulation of facts and admission of documents. This matter was taken under submission on August 24, 2015.

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on December 3, 2001, and has been a member of the State Bar of California at all times since that date.

#### **Case No. 14-O-03054 – The Moss/Gilbert Matter**

##### **Facts**

Michelle Moss and Mary Gilbert hired Respondent on August 27, 2011, to file and prosecute a lawsuit against the Los Angeles Police Department for the death of Coby Baker, Ms. Moss's son and the father of Ms. Gilbert's unborn son. On November 2, 2011, Respondent filed the lawsuit in the U.S. District Court Central District of California entitled *Moss, et al. v. City of Los Angeles, et al.*, case no. 2:11CV-09098.

At a pretrial conference on October 22, 2012, Respondent stated that the plaintiffs did not intend to proceed to trial, set for November 6, 2012. The court dismissed the case with prejudice for lack of prosecution on October 22, 2012.

Prior to this dismissal, on October 19, 2012, Respondent had filed a complaint in the Los Angeles Superior Court under case no. PC053918, wherein he raised substantially similar claims

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<sup>2</sup> Although he was properly served with a notice in lieu of subpoena, Respondent failed to appear at the first day of trial. His counsel was present and the trial proceeded without Respondent.

as the federal matter. On March 18, 2013, the defendants had the superior court case removed to the federal court, under new case no. 2:13-CV-01926.

On October 21, 2013, the defendants moved for judgment on the pleadings seeking to dismiss the second federal case with prejudice. Respondent did not oppose the motion to dismiss. The court granted the motion, in part, and denied it, in part.

Toward the end of 2013, Respondent started having marital discord and financial difficulties. Trial was set for February 11, 2014, pursuant to the court's order dated May 20, 2013.

At the January 27, 2014 pretrial conference, Respondent, having failed to comply with the pretrial requirements and being unprepared to participate, was invited by the court to file a motion for continuance by January 28, 2014. In the motion for continuance, Respondent was to explain why he should be excused from timely compliance with the pretrial requirements.

Respondent filed some of the required pretrial documents, but not the motion to continue trial invited by the court. After appearing at the pretrial conference January 27, 2014, Respondent took no further action on behalf of his clients and effectively withdrew from employment. Respondent did not seek or obtain permission from the court to withdraw.<sup>3</sup> During or about this same time period, Respondent failed to keep his membership records address and contact information up to date. He did not update his membership records information until August 2015.

On January 29, 2014, the defendants filed a motion to dismiss for failure to prosecute. Respondent failed to oppose the motion to dismiss.

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<sup>3</sup> Rule 83-2.3.2 of the Central District local rules states that an attorney may not withdraw as counsel except by leave of court.

On January 31, 2014, the court ordered that any belatedly filed pretrial documents from the plaintiffs were to be stricken in light of Respondent's failure to file required pretrial documents in advance of trial. On February 4, 2014, the court dismissed the case for failure to prosecute and for unreasonably delaying the resolution of the claims, which were originally brought in 2011.<sup>4</sup>

On April 21, 2014, the plaintiffs filed a motion to substitute in new attorneys and filed a motion for relief from the judgment. In April 2014, Respondent's clients through their new attorneys repeatedly requested the client files from Respondent. Respondent, however, did not respond.

On June 6, 2014, the court allowed attorneys Michael Hirman and Terry John Walker to be substituted in place of Respondent on the grounds that Respondent abandoned the plaintiffs. The court, however, denied the plaintiffs' motion for relief from judgment.

On July 3, 2014, Mr. Hirman filed a notice of appeal to the Ninth Circuit for the plaintiffs. After two appeals were denied, Ms. Moss and Ms. Gilbert no longer have an active case.

As of the time of trial, Respondent still had not released the clients' files. Also, Respondent is still experiencing marital discord and financial difficulties.

### **Conclusions**

#### ***Count One – Rule 3-110(A) [Failure to Perform Legal Services with Competence]***

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. By failing to comply with the federal court's pretrial requirements, failing to move for a continuance, failing to prosecute his client's case, and

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<sup>4</sup> Respondent's testimony that he was preparing for trial and was ready to go to trial was not supported by the evidence and not credible.

failing to oppose the October 21, 2013 motion to dismiss, Respondent recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

***Count Two – Rule 3-700(A)(1) [Failure to Obtain Court Permission to Withdraw]***

Rule 3-700(A)(1) states that if permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission. By improperly withdrawing from representation in the aforementioned matter, without the required permission of the court, Respondent willfully violated rule 3-700(A)(1).

***Count Three – Rule 3-700(D)(1) [Failure to Return Client Papers/Property]***

Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. By failing to promptly release to his clients, after the termination of Respondent's employment, all of their papers and property upon their request, Respondent willfully violated rule 3-700(D)(1).

**Case No. 14-O-03055 – The Deshchekina Matter**

**Facts**

Ksenia Deshchekina and Respondent entered into a contingency fee agreement on November 26, 2012. Respondent represented Ms. Deshchekina in her lawsuit against Mr. Weintraub, et al., for trademark infringement and violations of her rights to publicity and privacy. The case was filed on April 11, 2013, in the Los Angeles Superior Court under case no. SCI20546.

As noted above, Respondent started having marital discord and financial difficulties toward the end of 2013. In November 2013, Respondent took no further action on behalf of

Ms. Deshchekina after filing the complaint and just “disappeared” and effectively withdrew from employment. Respondent did not seek or obtain permission from the court to withdrawal.<sup>5</sup>

In January 2014, the defendants propounded discovery on Respondent for this matter. Respondent failed to respond to the discovery requests.

On March 21, 2014, the defendants moved to compel responses to demands for production and special interrogatories, moved for an order establishing admissions, and moved for sanctions against Ms. Deshchekina and Respondent for their failure to respond to the underlying discovery requests. Respondent failed to inform Ms. Deshchekina of his failure to respond to discovery and the sanctions sought to be imposed. Respondent failed to respond to the motion to compel and to the motion for sanctions filed on March 21, 2014.

On April 21 and 23, 2014, Ms. Deshchekina attempted to contact Respondent telephonically. She also sent him numerous emails between November 2013 and April 2014, but was unable to reach him, and he failed to make any substantive contact with her.

Specifically, Respondent’s only communication to Ms. Deshchekina from December 2013 until May 2014 was a text message on April 23, 2014, which stated, “Will call u this evening.” Respondent, however, never made this promised telephone call.

The day after Respondent failed to call, Ms. Deshchekina wrote a letter to Respondent, stating she discovered Respondent’s failure to respond to discovery and failure to respond to defendants’ motion to compel and motion for sanctions. Ms. Deshchekina then asked for information and explanation of the status of her case.

On May 16, 2014, Ms. Deshchekina mailed another letter to Respondent, explaining her intent to remove him as counsel because he abandoned her. Ms. Deshchekina’s new counsel,

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<sup>5</sup> Code of Civil Procedure section 284 requires that absent filed written consent of both the client and attorney, an attorney may not withdraw as counsel except by court order. (See also California Rules of Court 3.1362.)

Clark L. McCutchen, sent Respondent a substitution of counsel, but Respondent failed to sign or otherwise respond to it. On May 23, 2014, Ms. Deshchekina was forced to make an *ex parte* application for substitution of counsel, which was granted.

Respondent's inaction caused Ms. Deshchekina to become frustrated and scared. As a result of his abandonment of her case, \$12,000 in sanctions were ordered against Ms. Deshchekina, and she ultimately settled her lawsuit for a fraction of what she believed it was worth. Ms. Deshchekina's decision to settle prior to trial was at least partially motivated by her fear that she would have to pay the \$12,000 in sanctions. Defense counsel agreed to waive the sanctions as part of the settlement.

### **Conclusions**

#### ***Count Four – Section 6068, subd. (m) [Failure to Communicate]***

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. By failing to substantively respond to Ms. Deshchekina's telephone calls and emails between December 2013 and May 2014 seeking a reasonable status update, Respondent willfully violated section 6068, subdivision (m).

#### ***Count Five – Rule 3-110(A) [Failure to Perform Legal Services with Competence]***

By failing to respond to discovery, failing to respond to the motion to compel, and failing to respond to the motion for sanctions, Respondent recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).<sup>6</sup>

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<sup>6</sup> During trial, Respondent stipulated to the misconduct alleged in Count Five.

***Count Six – Rule 3-700(A)(1) [Failure to Obtain Court Permission to Withdraw]***

By improperly withdrawing from representation in Ms. Deshchekina's lawsuit without the required permission of the court, Respondent willfully violated rule 3-700(A)(1).

***Count Seven – Rule 3-700(D)(1) [Failure to Return Client Papers/Property]***

As referenced above, an essential element of a rule 3-700(D)(1) violation is that the client request that the attorney release all client papers and property. It has not been established by clear and convincing evidence that Ms. Deshchekina requested that Respondent turn over her file, client papers, or property. Accordingly, Count Seven is dismissed with prejudice.

**Case No. 14-O-03268 – The DeStefano Matter**

**Facts**

In an agreement dated May 31, 2013, Respondent detailed his legal representation of Todd and Carisse DeStefano in Los Angeles Superior Court case no. BC472814. The representation would continue until a settlement or judgment was reached. Respondent also included an invoice for \$2,500 payable by the DeStefanos. On June 21, 2013, Respondent substituted in as counsel of record for the DeStefanos.

Toward the end of 2013, Respondent started having marital discord and financial difficulties. In January 2014, Respondent took no further action on behalf of his clients. He disappeared and effectively withdrew from employment. Respondent did not seek or obtain permission from the court to withdrawal.

On January 31, 2014, the plaintiffs moved to compel the deposition of Mrs. DeStefano and to impose monetary sanctions. Respondent failed to oppose or otherwise respond to the motion to compel and the motion for sanctions. On February 21, 2014, the plaintiffs filed notice of Respondent's non-opposition to their motion to compel and request for sanctions. On February 28, 2014, the court granted the plaintiffs' motion to compel the deposition.



During this time, the DeStefanos were unable to reach Respondent for information on their case. On March 21, 2014, the DeStefanos made an *ex parte* application to remove Respondent as counsel of record and substitute in their new attorney, Robert L. Esensten. The DeStefanos further requested that all documents, files, and records be forwarded to them by Respondent.

On April 7, 2014, after a hearing on the *ex parte* application, the court ruled that Mr. Esensten was substituted in as counsel of record in place of Respondent. The court then ordered Respondent to immediately turn over to Mr. Esensten all documents, files, and records in his possession and control relating to the DeStefanos.

Respondent has yet to provide the client file to the DeStefanos and has not responded to multiple attempts to communicate with him.

### **Conclusions**

#### ***Count Eight – Rule 3-110(A) [Failure to Perform Legal Services with Competence]***

By failing to oppose or otherwise respond to the motion to compel and the motion for sanctions, Respondent recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

#### ***Count Nine – Rule 3-700(A)(1) [Failure to Obtain Court Permission to Withdraw]***

By improperly withdrawing from representation in the DeStefano lawsuit without the required permission of the court, Respondent willfully violated rule 3-700(A)(1).

#### ***Count Ten – Rule 3-700(D)(1) [Failure to Return Client Papers/Property]***

By failing to promptly release to his clients, after the termination of Respondent's employment, all of their papers and property upon their request, as well as upon order of the superior court, Respondent willfully violated rule 3-700(D)(1).

## **Aggravation<sup>7</sup>**

### **Multiple Acts (Std. 1.5(b).)**

Respondent's multiple acts of misconduct constitute an aggravating factor.

### **Significant Client Harm (Std. 1.5(j).)**

Respondent's misconduct resulted in significant harm to his clients. Respondent's conduct forced all three of his clients to hire alternative counsel. Respondent's actions in the Moss/Gilbert matter caused his clients' case to be dismissed for failure to prosecute, and their new counsel was not able overturn that ruling on appeal. Consequently, Respondent's significant harm to his clients warrants considerable weight in aggravation.

### **Uncharged Misconduct (Std. 1.5(h).)**

Although evidence of uncharged misconduct may not be used as an independent ground of discipline, it may be considered in aggravation where the "evidence was elicited for the relevant purpose of inquiring into the cause of the charged misconduct [and where the finding of uncharged misconduct] was based on [the respondent's] own testimony. . . ." (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 36.) Here, Respondent testified that he failed to update his membership records address between February 2014 and August 2015. Said conduct constitutes a willful violation of section 6002.1, subdivision (a)(1), and warrants limited consideration in aggravation.

## **Mitigation**

### **No Prior Record of Discipline (Std. 1.6(a).)**

Respondent was admitted to practice law in California in 2001, and has no prior record of discipline. His nearly 12 years of discipline-free conduct prior to the present misconduct

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<sup>7</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

warrants significant consideration in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than ten years of discipline-free practice entitled to significant weight].)

**Good Character (Std. 1.6(f).)**

Respondent provided character evidence from five witnesses. Two of the witnesses testified and the other three presented declarations. Of the five character witnesses, three were attorneys. Respondent's character witnesses attested to his honesty, good character, and competence as an attorney. Respondent's good character evidence warrants some consideration in mitigation.

**Extreme Emotional Difficulties (Std. 1.6(d).)**

At the time of the misconduct, Respondent was experiencing extreme emotional difficulties associated with his marital discord and financial difficulties. However, it has not been established by clear and convincing evidence that Respondent's emotional and financial difficulties no longer pose a risk of further misconduct. Accordingly, the court affords these factors nominal weight in mitigation.

**Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)**

Respondent entered into a partial, but detailed stipulation of facts and admission of documents. Respondent's cooperation with the State Bar warrants some consideration in mitigation.

**Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; Std. 1.1.)

In determining the level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d. 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d. 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed. Standard 1.7 further states that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any additional aggravating or mitigating factors.

In this case, the standards call for the imposition of a sanction involving actual suspension. Standard 2.7(b) provides that actual suspension is the presumed sanction for performance, communication, or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar requested, among other things, that Respondent be actually suspended for 90 days. Respondent, on the other hand, argued that he should receive a stayed suspension.

In support of its recommended discipline, the State Bar cited *Bach v. State Bar* (1991) 52 Cal.3d 1201. In *Bach*, the Supreme Court imposed a suspension of 30 days and until the attorney

paid restitution in a single client matter. In that case, the attorney failed to perform competently, withdrew his representation without the client's consent or court approval, failed to refund unearned fees, and failed to respond to written inquiries from a State Bar investigator. The attorney in *Bach* had no prior discipline, but the Supreme Court found that his lack of insight and his attitude toward discipline evidenced his lack of cooperation.

Respondent's misconduct in the present case is more serious than *Bach*. *Bach* only involved a single client, while Respondent effectively abandoned three clients. Further, the harm Respondent caused his clients is a significant factor in aggravation. In addition, the court is not convinced that Respondent has rebounded from the emotional and financial issues that contributed to the present misconduct. Respondent's failure to appear at the first day of trial in this matter and his ongoing failure to return some of his clients' files give further indication that additional public protection is appropriate and necessary. Accordingly, this court concludes that the present matter warrants a greater level of discipline than *Bach*.

Therefore, having considered the evidence and the law, the court believes that a 90-day period of actual suspension, among other things, is sufficient to protect the public, the courts, and the legal profession.

### **Recommendations**

It is recommended that respondent **Raaqim A.S. Knight**, State Bar Number 217630, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that Respondent be placed on probation<sup>8</sup> for a period of two years subject to the following conditions:

1. Respondent is suspended from the practice of law for the first 90 days of probation.

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<sup>8</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
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 of the conditions of Respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
5. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with Respondent's probation conditions.
6. Within 30 days after 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.
7. Within one year after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

At the expiration of the probation period, if Respondent has complied with all conditions of probation, Respondent will be relieved of the stayed suspension.

#### **Multistate Professional Responsibility Examination**

It is recommended that Respondent be ordered to take and pass the Multistate

Professional Responsibility Examination (MPRE) within one year after the effective date of the

Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.


**California Rules of Court, Rule 9.20**

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

**Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: November 3, 2015

  
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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 November 3, 2015, I deposited a true copy of the following document(s):

### DECISION

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

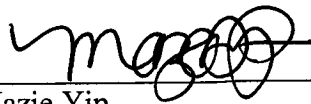
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

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:

HUGH G. RADIGAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 3, 2015.

  
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Mazie Yip  
Case Administrator  
State Bar Court