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State	Bar Court of Califor Hearing Department Los Angeles DISBARMENT	nia ·
Counsel For The State Bar	Case Number(s): 15-C-13646-DFM	For Court use only
Jamie Kim Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1182		FILED JUN -5 2017 Yr
Bar <b># 281574</b>		STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent	_	
Michael Miretksy McCurdy & Leibl LLP 12925 Riverside Dr., Ste. 200 Sherman Oaks, CA 91423 (818) 380-0123		UBLIC MATTER
(010) 000-0120	Submitted to: Settlement J	ludge
Bar # <b>180734</b>	STIPULATION RE FACTS, DISPOSITION AND ORDER INVOLUNTARY INACTIVE	CONCLUSIONS OF LAW AND R APPROVING; ORDER OF ENROLLMENT
In the Matter of: JOHN DARWIN MCCURDY, II	DISBARMENT	
	☐ PREVIOUS STIPULATI	ON REJECTED
Bar # <b>54091</b>		
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 14, 1972**.
- (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 (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." 226 151 502

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(5)		clusio	ons of law, drawn from and specifically referring to the facts are also included under "Conclusions of
(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):		
	<ul> <li>Costs to be awarded to the State Bar.</li> <li>Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".</li> <li>Costs are entirely waived.</li> </ul>		
(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(h) & 1.5]. Facts supporting aggravating circumstances are required.			
(1)	$\boxtimes$	Prio	r record of discipline
	(a)	$\boxtimes$	State Bar Court case # of prior case 94-C-15959
	(b)	$\boxtimes$	Date prior discipline effective February 6, 1997
	(c)	$\boxtimes$	Rules of Professional Conduct/ State Bar Act violations: See attachment, page 7.
	(d)		Degree of prior discipline Four-years' suspension, stayed, and placed on four-years' probation with an actual two-years' suspension.
	(e)		If respondent has two or more incidents of prior discipline, use space provided below:
(2)		inte by, o	ntional/Bad Faith/Dishonesty: Respondent's misconduct was dishonest, intentional, or surrounded or followed by bad faith.
(3)		Mis	representation: Respondent's misconduct was surrounded by, or followed by misrepresentation.
(4)		Con	cealment: Respondent's misconduct was surrounded by, or followed by concealment.
(5)		Ove	rreaching: Respondent's misconduct was surrounded by, or followed by overreaching.
(6)		<b>Und</b> Prof	charged Violations: Respondent's conduct involves uncharged violations of the Business and fessions Code or the Rules of Professional Conduct.

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(7)		<b>Trust Violation:</b> 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.	
(8)		Harm: Respondent's misconduct harmed significantly a client, the public, or the administration of justice.	
(9)		<b>Indifference:</b> Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.	
(10)		<b>Lack of Candor/Cooperation:</b> Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.	
(11)		Multiple Acts: Respondent's current misconduct evidences multiple acts of wrongdoing.	
(12)		Pattern: Respondent's current misconduct demonstrates a pattern of misconduct.	
(13)		Restitution: Respondent failed to make restitution.	
(14)		Vulnerable Victim: The victim(s) of Respondent's misconduct was/were highly vulnerable.	
(15)		No aggravating circumstances are involved.	
		ating Circumstances [see standards 1.2(i) & 1.6]. Facts supporting mitigating imstances are required.	
(1)		No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.	
(2)		No Harm: Respondent did not harm the client, the public, or the administration of justice.	
(3)		Candor/Cooperation: Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.	
(4)		<b>Remorse:</b> Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.	
(5)		<b>Restitution:</b> Respondent paid \$ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.	
(6)		<b>Delay:</b> These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.	
(7)		Good Faith: Respondent acted with a good faith belief that was honestly held and objectively reasonable.	
(8)		<b>Emotional/Physical Difficulties:</b> 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)		<b>Severe Financial Stress:</b> 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)		<b>Good Character:</b> 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)		<b>Rehabilitation:</b> 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 7.				

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D. D	isci	pline: Disbarment.	
E. A	ddi	tional Requirements:	
(1)	Rul	e 9.20, California Rules of Court: Respondent must comply with the requirements of rule 9.20, California es of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar 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:

JOHN DARWIN MCCURDY, II

CASE NUMBER:

15-C-13646-DFM

#### FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which he was convicted involved misconduct warranting discipline.

## Case No. 15-C-13646 (Conviction Proceedings)

#### PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

- 1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.
- 2. On July 1, 2015, the Santa Barbara County District Attorney's Office filed a felony complaint in case number 1476780, charging respondent with one count of violating Penal Code section 29800(a)(1) [unlawful possession of a firearm], a felony, one count of violating Penal Code section 25850(a) [unlawful possession of a loaded firearm in a vehicle while in a public place], a felony, one count of violating Penal Code section 25400(c)(6)(A) [unlawful possession of a concealed and loaded firearm within a vehicle], a felony, one count of violating Vehicle Code section 23152(a) [driving under the influence of alcohol], a misdemeanor, and one count of violating Vehicle Code section 23152(b) [driving with a blood alcohol concentration of 0.08% or higher], a misdemeanor.
- 3. On November 5, 2015, the Santa Barbara County District Attorney's Office filed a first amended felony complaint in case number 1476780, charging respondent with one count of violating Penal Code section 25400(c)(6)(a) [carrying a concealed and loaded firearm in a vehicle], a felony, one count of violating Vehicle Code section 23152(a) [driving under the influence of alcohol], a misdemeanor, and one count of violating Vehicle Code section 23152(b) [driving with a BAC of 0.08% or higher], a misdemeanor.
- 4. On November 12, 2015, the court reduced count one to a misdemeanor violation of Penal Code section 25400(c)(6)(a) [carrying a concealed and loaded firearm in a vehicle], pursuant to Penal Code section 17(b). Respondent then pled no contest to counts one and three. Pursuant to a motion by the District Attorney's Office, the remaining count was dismissed. Respondent was convicted of violating Penal Code section 25400(c)(6)(a) and Vehicle Code section 23152(b), both misdemeanors. The court suspended imposition of sentence, placed respondent on probation for 36 months. Respondent was sentenced to 90 days in county jail, with credit for one day for time served. Respondent was ordered to enroll in a three month First Offender AB541 Program as well as a Clean and Sober Program. Respondent was also ordered not to own or possess any firearms. Respondent was also fined and ordered to pay restitution to the state.

- 5. On January 12, 2016, the court modified respondent's probation and ordered that respondent pay a reasonable monthly supervision fee as determined by the Probation Department, not to exceed \$90 per month. The order also provided that respondent not be required to enroll in a three month First Offender AB541 Program or a Clean and Sober Program.
- 6. On April 6, 2016, in case number 15-C-13646, the Review Department referred respondent's misdemeanor conviction for violating Penal Code section 25400(c)(6)(a) and Vehicle Code section 23152(b) to the Hearing Department for hearing and decision recommending discipline, in the event that the Hearing Department finds that the facts and circumstances surrounding the misdemeanor violation involved moral turpitude or other misconduct warranting discipline.

#### **FACTS**:

- 7. On June 2, 2015, at approximately 1:49 p.m., California Highway Patrol Officer Isaac Clocherty ("Officer Clocherty") observed respondent driving 80 miles per hour southbound on highway US-101 in Santa Barbara, CA. Officer Clocherty conducted a traffic stop on respondent. Once exiting the freeway, Officer Clocherty approached respondent's vehicle and advised him of the reason for the traffic stop. Officer Clocherty smelled the odor of alcohol emitting from respondent's vehicle and asked respondent whether he had consumed any alcoholic beverages. Respondent stated that he had not consumed any alcoholic beverages. Officer Clocherty observed that respondent had red/watery eyes and slurred his speech and noted an odor of alcohol on respondent's breath. Officer Clocherty ran a DMV records search of respondent and learned that he had been convicted of a felony vehicular manslaughter on December 9, 1994.
- 8. Officer Clocherty asked respondent to exit his vehicle, and respondent complied. Respondent was unable to pass the field sobriety tests administered by Officer Clocherty. A preliminary alcohol screening test concluded that respondent had a blood alcohol concentration ("BAC") of .189% at the first administration and a BAC of .198% at the second administration. Officer Clocherty concluded that respondent was driving under the influence of alcohol. He was then placed under arrest for violating Vehicle Code section 23152(a). Officer Ayala then arrived at the scene to assist Officer Clocherty. Officer Clocherty searched respondent's vehicle and found a water bottle filled with an alcoholic beverage.
- 9. Officer Ayala conducted a search of respondent's vehicle and found two pistols, a .45 caliber Smith and Wesson, loaded with eight rounds in the magazine, and a .22LR caliber Ruger, loaded with one round in the chamber and four rounds in the magazine. The .45 caliber Smith and Wesson was not registered to respondent and there was no record of sale or ownership. The .22LR caliber Ruger was registered to respondent. When asked about the weapons, respondent stated that they were target pistols which would not hurt anyone. Officer Clocherty read respondent his Miranda Rights and transported him to Santa Barbara County Jail and booked him into custody.

#### **CONCLUSIONS OF LAW:**

10. The facts and circumstances surrounding the above-described violations involved moral turpitude, warranting discipline.

#### AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has one prior record of discipline.

On March 13, 1995, the Review Department ordered in State Bar case number 94-C-15959 that respondent be placed on interim suspension based on respondent's 1994 conviction for violations of Penal Code section 191.5(a) [gross vehicular manslaughter while intoxicated] and Vehicle Code sections 23153(a) [DUI causing bodily injury] and 253153(b) [DUI causing bodily injury with a BAC of 0.08% or more], transmitted to the Review Department by the Office of the Chief Trial Counsel on March 8, 1995. On April 11, 1995, the Review Department granted respondent's motion for a temporary stay of the interim suspension order. On May 23, 1995, the Review Department issued another order that respondent be placed on interim suspension. On February 2, 1996, the Review Department referred State Bar case number 94-C-15959 to the Hearing Department for a hearing on respondent's conviction.

Effective February 6, 1997, in State Bar case number 94-C-15959, the Supreme Court ordered that respondent be suspended for four years, stayed, and placed on four years of probation with an actual two-year suspension and until he proves his rehabilitation and passes the MPRE. On December 9, 1994, respondent had pled no contest to three felonies for violations of Penal Code section 191.5(a) [gross vehicular manslaughter while intoxicated] and Vehicle Code sections 23153(a) [DUI causing bodily injury] and 253153(b) [DUI causing bodily injury with a BAC of 0.08% or more] after he caused an automobile accident while under the influence of alcohol, which resulted in the death of one victim and injury to four family members. Respondent had been sentenced to six years in state prison and had a prior DUI conviction from 1985. Respondent's misconduct was mitigated by the facts that his insurance carrier had paid the victims \$1.35 million, that he was receiving psychotherapy and that he was participating in AA.

#### MITIGATING CIRCUMSTANCES.

**Pretrial Stipulation:** By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar resources and time. (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]; In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

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

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (In re Silverton (2005) 36 Cal.4th 81, 92, quoting In re Brown (1995) 12 Cal.4th 205, 220 and In re Young (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring

consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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

Standard 2.15(c) provides that disbarment or actual suspension is the presumed sanction for a final conviction of a misdemeanor involving moral turpitude, which warrants discipline. Moral turpitude has been defined as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*In re* Fahey (1973) 8 Cal.3d 842, 849.) A conviction for driving under the influence of alcohol or carrying a loaded firearm does not involve moral turpitude per se. (*In re Kelley* (1990) 52 Cal.3d 487, 494 [convictions for drunk driving do not per se establish moral turpitude]; *In re Hickey* (1990) 50 Cal.3d 571 [no moral turpitude found for a misdemeanor conviction of carrying a loaded weapon].) However, the misconduct here was respondent's third DUI, which followed a lengthy prior discipline for a criminal conviction in 1994 and DUI conviction in 1985. The pattern of respondent's alcohol-related criminal misconduct reflects a disregard for public safety, which is indicative of moral turpitude. (*In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402, 416 [repeated alcohol-related criminal conduct reflects wanton disregard for the safety of others which involves moral turpitude].)

Standard 1.7(a) provides that the most severe sanction applicable in a matter must be imposed. Standard 1.8(a) is also applicable in this matter. It provides that if a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust. Respondent's prior discipline of a two year actual suspension was for gross vehicular manslaughter which caused a death and serious injury to others, a serious crime. Therefore, discipline here should be more severe than a two year actual suspension.

In this matter, respondent was convicted of carrying a concealed and loaded firearm in a vehicle, and driving with a BAC over 0.08%. Respondent's conduct was not related to the practice of law, but was nonetheless serious as respondent exposed the public to danger, because he drove while intoxicated and because he was carrying two loaded weapons in his vehicle. This was also respondent's third DUI conviction. Respondent's misconduct is significantly aggravated by his prior record of discipline, which was a two year actual suspension for respondent's convictions for violations of Penal Code section 191.5(a) [gross vehicular manslaughter while intoxicated] and Vehicle Code sections 23153(a) [DUI causing bodily injury] and 253153(b) [DUI causing bodily injury with a BAC of 0.08% or more]. Respondent's misconduct is mitigated by entry into a pretrial stipulation. On balance, the aggravation outweighs the mitigation.

In light of the Standards, disbarment is appropriate to protect the public, courts and legal profession; maintain high professional standards by attorneys; and preserve public confidence in the legal profession. (Std. 1.1.)

# COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of May 17, 2017, the discipline costs in this matter are \$2,629. 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: JOHN DARWIN MCCURDY, II	Case number(s): 15-C-13646-DFM		

# 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.

5/24/17	Och Darvin MY LI	John Darwin McCurdy, II
Date / //	Respondent's Signature	Print Name
6/1/17	my H	Michael Miretsky
Date	Respondent's Counsel Signature	Print Name
6/1/2017	Jui Mi	Jamie Kim
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)			
In the Matter of: JOHN DARWIN MCCURDY, II		Case Number(s): 15-C-13646-DFM	
	DISBARMI	ENT ORDER	
Finding the s requested dis	tipulation to be fair to the parties and that it ac smissal of counts/charges, if any, is GRANTE	dequately protects the public, IT IS ORDERED that the D without prejudice, and:	
	The stipulated facts and disposition are APF Supreme Court.	PROVED and the DISCIPLINE RECOMMENDED to the	
$\boxtimes$	The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.		
$\boxtimes$	All Hearing dates are vacated.		
2.On page 5	b of the Stipulation, the sentence under "l	e 3, "10" is deleted, and in its place is inserted "11". Facts and Conclusions of Law," line 2, "misconduct serted "moral turpitude which warrants discipline."	
within 15 day stipulation. (S	s after service of this order, is granted; or 2) t See rule 5.58(E) & (F), Rules of Procedure.) <b>T</b>	es: 1) a motion to withdraw or modify the stipulation, filed his court modifies or further modifies the approved he effective date of this disposition is the effective date after file date. (See rule 9.18(a), California Rules of	
and Profession calendar day order imposir	ons Code section 6007, subdivision (c)(4). Ress after this order is served by mail and will ter	erred to involuntary inactive status pursuant to Business espondent's inactive enrollment will be effective three (3) minate upon the effective date of the Supreme Court's 5.111(D)(2) of the Rules of Procedure of the State Bar of pursuant to its plenary jurisdiction.	

June 5, 2017

REBECCA MEYER ROSENBERG, JUDGE PRO TEM
Judge of the State Bar Court

Pro Tein

#### **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 June 5, 2017, 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:

MICHAEL MIRETSKY MCCURDY & LEIBL LLP 12925 RIVERSIDE DR STE 200 SHERMAN OAKS, CA 91423

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

## JAMIE KIM, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 5, 2017.

Tammy Cleaver
Case Administrator
State Bar Court