

ORIGINAL

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State Bar Court of California
Hearing Department
Los Angeles
STAYED SUSPENSION

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Hugh G. Radigan Deputy Trial Counsel 845 South Figueroa Street Los Angeles, California 90017-2515 213-765-1206</p> <p>Bar # 94251</p>	<p>Case Number(s): 15-O-10864-WKM</p>	<p>For Court use only</p> <p>FILED JUN 08 2016 PB. STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Edward O. Lear 5200 West Century Blvd., #345 Los Angeles, California 90045 310-642-6900</p> <p>Bar # 132699</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: CARLOS MARTINEZCOUOH</p> <p>Bar # 188126</p> <p>A Member of the State Bar of California (Respondent)</p>		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 3, 1997**.
- (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 **11** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs are added to membership fee for calendar year following effective date of discipline.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **Costs to be paid in equal amounts prior to February 1 for the two billing cycles following the effective date of the Supreme Court order.** (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.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 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."
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) **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..
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.

- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Candor/Lack of Cooperation:** 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. See page 10 of the attachment.
- (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.

Additional aggravating circumstances

C. Mitigating Circumstances [see standards 1.2(i) & 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 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) **Remorse:** 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) **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 objectively 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.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

See page 9 of the attachment.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **One (1) year..**
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

The above-referenced suspension is stayed.

- (2) **Probation:**
- Respondent is placed on probation for a period of **one (1) year**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) 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.

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- (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 conditions of probation during the preceding calendar quarter. Respondent must also state 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 days, that report must be submitted on the next 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 period of probation and no later than the last day of probation.

- (5) 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 to the monitor 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 probation monitor.
- (6) 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 probation conditions.
- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.

No Ethics School recommended. Reason: .

- (8) 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.
- (9) 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:

- (1) **Multistate Professional Responsibility Examination:** 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. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

No MPRE recommended. Reason:

- (2) **Other Conditions:**

8. On February 25, 2014, the court returned the request for judgment to respondent because of the deficiencies in the proposed judgment.

9. On April 8, 2014, respondent filed a Property Declaration and a Declaration for Default or Uncontested Dissolution, and a proposed judgment with the court.

10. On April 8, 2014, the court returned the Declaration of Default to respondent because it referenced an incorrect case number in which child support was being enforced, and because it did not (1) either state (a) that there were no assets or debts to be disposed of by the court or (b) that the community or quasi-community assets and debts were listed on a current property declaration which included an estimate of the value of the assets and debts proposed to be distributed to each party and that the division in the proposed judgment was a fair and equal division of the property and debts, or if there was a negative estate, that the debts were assigned fairly and equitably. The court also returned the proposed judgment to respondent because it did not include provisions for child or family support.

11. On August 6, 2014, respondent filed a request for default setting with the court.

12. On November 7, 2014, respondent submitted a judgment package to the court, which did not contain or include (1) a complete Declaration for Default or Uncontested Dissolution signed and dated by the petitioner; (2) an Income and Expense Declaration with information sufficient for the court to determine guideline child support; (3) an Order/Notice to Withhold Income for Child Support; (4) a completed Child Support case Registry form; (5) form FL-343 in support of spousal support, or a statement regarding support issues that the court would retain jurisdiction over, or a statement that the court terminates jurisdiction over support; (6) a form FL-190 (Notice of Entry of Judgment) in triplicate; and a list of separate and community property.

13. After November 7, 2014, respondent did not file any other document with the court on behalf of Mora.

14. On November 18, 2014, the court returned the judgment package filed November 7, 2014, to respondent because of the deficiencies in the proposed judgment. Respondent failed to inform Mora of the rejection of the judgment package and constructively terminated his employment by failing to take any further action on behalf of Mora.

15. On January 8, 2015, Mora filed a Request for Default Setting with the court, in pro per, and a proof of service showing service of this document on respondent by mail. In Mora's January 8, 2015 request, Mora stated that she was seeking to terminate spousal support and was not requesting child support.

16. On January 29, 2015, the court returned the Request for Default Setting to Mora because the firm name/attorney information was incorrect. The court notified Mora that she needed to file a substitution of attorney if she was no longer represented by counsel.

17. On March 13, 2015, Mora filed a substitution of attorney with the court naming herself in pro per and substituting respondent out of the case. Respondent did not sign the substitution of attorney.

18. On February 5, 2015, the State Bar of California ("State Bar") received a complaint from Mora against respondent, which was identified by the State Bar as case no. 15-O-10864.

19. On March 20, 2015, the State Bar sent a letter to respondent regarding Mora's complaint and asked respondent for a written response to Mora's complaint by April 3, 2015. Respondent received but did not respond to the State Bar's March 20, 2015 letter.

20. On April 7, 2015, the State Bar sent a letter to respondent regarding Mora's complaint and asked respondent for a written response to Mora's complaint by April 21, 2015. Respondent received but did not respond to the State Bar's April 7, 2015 letter.

CONCLUSIONS OF LAW:

21. By filing a proof of service of the summons on Luis Sanchez on or about October 30, 2013, which did not include an address where he was served and which was rejected by the court on or about November 7, 2013; filing a deficient request for judgment on or about December 26, 2013, which was rejected by the court on or about February 25, 2014; filing a deficient proposed judgment on or about March 4, 2014, which was rejected by the court on or about April 8, 2014; filing a deficient Declaration for Default or Uncontested Dissolution on or about April 8, 2014, which was rejected by the court on or about April 8, 2014; and, filing a deficient proposed judgment on or about November 7, 2014, which was rejected by the court on or about November 18, 2014, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).]

22. By constructively terminating respondent's employment on or about November 18, 2014 by failing to take any action on the client's behalf after the Los Angeles Superior Court returned, unfiled, a request for judgment which respondent submitted on or about November 7, 2014 on behalf of the client in *In re Marriage of Maria de Jesus Mora and Luis Sanchez*, Los Angeles County Superior Court case no. BD568458, and thereafter failing to inform the client that the request for judgment was returned by the court unfiled and that respondent was withdrawing from employment, respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to respondent's client, Maria de Jesus Mora, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

23. By failing to provide a substantive response to the State Bar's letters of March 20, 2015 and April 7, 2015, which respondent received, that requested respondent's response to the allegations of misconduct being investigated in case no. 15-O-10685, Respondent failed to cooperate and participate in a disciplinary investigation pending against respondent in willful violation of Business and Professions Code, section 6068(i).

ADDITIONAL MITIGATING CIRCUMSTANCES.

No prior record of discipline. Although respondent's misconduct is serious, he was admitted to the State Bar on June 3, 1997, and has no prior record of discipline in over 16 years of practice before his misconduct began around November 2013. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [over 10 years of active practice before first act of misconduct worth significant weight in mitigation].)

Pretrial Stipulation: Respondent has stipulated to facts and culpability prior to trial in the Carreon matter, and thereby saved 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].)

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct; Std. 1.5(b): Respondent failed to perform, failed to properly withdraw from his representation of the client and failed to cooperate in the State Bar's investigation of his client's complaint.

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).)

In this matter, respondent has committed three acts of professional misconduct. Standard 1.7(a) requires that where a respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

The most severe sanction applicable to respondent's misconduct is found in Standard 2.15, which applies to respondent's violation of Rules of Professional Conduct, rule 3-700(A)(2). Standard 2.15 provides that suspension not to exceed three years or reproof is appropriate for a violation of a provision of the Business and Professions Code or the Rules of Professional Conduct not specified in these Standards.

The gravamen of respondent's misconduct is his failure to finalize his client's dissolution over a period exceeding three and one-half years and improperly withdrawing from the representation, amounting to an abandonment of the client. Respondent's failure to participate during the investigation of the complaint demonstrates a lack of appreciation for the discipline process. While the client's dissolution remains unresolved, there was no significant harm to the client (she was not seeking spousal or child

support) and respondent's many years of practice without prior discipline warrants significant weight. Thus, a stayed suspension for a period of one year with monitoring by the Office of Probation for a period of one year would serve the primary purposes of discipline.

This recommendation is consistent with Supreme Court case law involving a failure to perform and proper withdrawal from representation in a single client matter by a member with no prior discipline and who failed to cooperate during State Bar proceedings. (*Van Sloten v. State Bar* (1989) 48 Cal. 3rd 921 [six-month stayed suspension, one year probation for an attorney, with no prior record of discipline in approximately five years of practice before the misconduct began, who failed to perform in a marital dissolution for one year, failed to communicate and failed to formally withdraw from the representation in a single client matter, without serious harm to the client, and aggravated by the attorney's failure to appear at review department proceedings, demonstrating a lack of appreciation for the discipline process and the charges against him].)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of May 2, 2016, the prosecution costs in this matter are approximately \$7,431. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

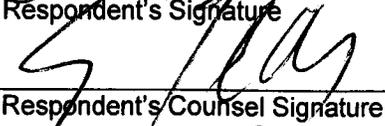
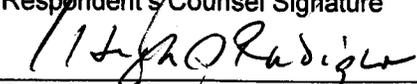
Respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course(s) to be ordered as a condition of reapproval or suspension. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: CARLOS MARTINEZCOUOH	Case number(s): 15-O-10864-WKM
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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>05-09-16</u> Date	 Respondent's Signature	<u>Carlos MartinezCough</u> Print Name
<u>5/10/16</u> Date	 Respondent's Counsel Signature	<u>Edward O. Lear</u> Print Name
<u>May 10 '16</u> Date	 Deputy Trial Counsel's Signature	<u>Hugh G. Radigan</u> Print Name

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In the Matter of: CARLOS MARTINEZCOUOH	Case Number(s): 15-O-10864-WKM
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STAYED SUSPENSION 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.

Page 10, "improper withdrawal" shall be substituted for "proper withdrawal" in paragraph 1.

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.)**

Date June 8, 2016


YVETTE D. ROLAND
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 June 8, 2016, 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:

**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 GERARD RADIGAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 8, 2016.

Paul Barona

Paul Barona
Case Administrator
State Bar Court