

ORIGINAL

**State Bar Court of California
Hearing Department
Los Angeles
DISBARMENT**

Counsel For The State Bar Drew Massey 845 S. Figueroa Street Los Angeles, CA 90017 Tel: (213) 765-1204 Bar # 244350	Case Number(s): 15-O-14452-DFM	For Court use only PUBLIC MATTER FILED ✓ MAR 20 2017 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent Gilbert Nishimura Seki, Nishimura & Watase, LLP 600 Wilshire Blvd. Suite 1250 Los Angeles, CA 9007 Bar # 57905	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: BERNARD BECKKER Bar # 103386 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 **June 10, 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."
- (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(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:
- (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.

(Do not write above this line.)

- (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) ☐ **Lack of Candor/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, 8.
- (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.

(Do not write above this line.)

- (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: Absence of prior discipline and pretrial stipulation. See page 8.

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 _____ 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: BERNARD BECKKER

CASE NUMBER: 15-O-14452

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 15-O-14452 (Complainant: Andy D'Addario)

FACTS:

1. On January 28, 2014, Andy D'Addario hired Respondent to represent him in a dissolution of marriage action.

2. The same day, D'Addario paid Respondent \$5,000 by credit card. \$485 of that amount was designated as going toward costs. The rest represented advanced fees.

3. On March 3, 2014, Respondent informed D'Addario that he (Respondent) had received a phone call from another attorney, Lisa Sale, that D'Addario's wife intended to retain.

4. Sale requested that D'Addario pay the initial retainer of \$5,000 for his wife's legal services. Respondent indicated that such was appropriate as long as there was a later offset.

5. Respondent confirmed the agreement to pay the funds in a March 5, 2014 e-mail to Sale and specifically noted that the funds would first be sent to Respondent, deposited in his trust account, and then forwarded to Sale.

6. On March 11, 2014, D'Addario's credit card was charged \$5,000 by Respondent. However, no deposit of \$5,000 was made to Respondent's CTA.

7. Although D'Addario requested that the money be paid to Sale, the \$5,000 was not disbursed to Sale.

8. In fact, the funds were deposited into Respondent's general business account maintained at Bank of the West, account number XXX-XX2713. This account was not labeled "Trust Account," "Client Funds Account," or with words of similar import.

9. The funds became available on March 13, 2014.

10. By April 30, 2014, the balance in Respondent's general business account had fallen to \$2,155.36.

11. On June 13, 2016, Sale wrote to Respondent regarding, among other matters, the nonpayment of the \$5,000. Sale reminded Respondent of the agreement to pay the fees which had not yet been paid.

12. On June 30, 2014, the account had fallen to \$1,774.49.

13. When no payment was forthcoming, Sale moved for an order in court in August 2014.

14. Respondent maintained a client trust account at Bank of the West, account number XXX-XX4702 ("CTA").

15. On August 1, 2014, the balance in Respondent's CTA was \$896.43.

16. On August 19, 2014, Respondent deposited a check into his CTA payable to Respondent from Fidelity Investments. The amount of the check was \$10,000 of which Respondent took \$200 cash back for a total deposit of \$9,800. This payment, made out to Respondent only, was for personal investment income.

17. On September 10, 2014, the parties then agreed to a stipulated order, directing Respondent to pay \$5,000 to Sale "forthwith." Respondent then wrote a check drawn on his CTA in the amount of \$5,000 the same day.

18. On March 3, 2015, Respondent deposited an additional Fidelity Investment check, made payable to Respondent, into his CTA in the amount of \$10,000.

19. On March 19, 2015, D'Addario substituted in new counsel to his dissolution matter. D'Addario's new counsel requested an accounting.

20. On May 12, 2015, D'Addario contacted Respondent by e-mail and requested an accounting. He referenced the earlier request made by his new counsel and asked that the accounting be made.

21. When no response was received, D'Addario e-mailed Respondent again on May 13, 2015 and May 19, 2015 and requested an accounting in each instance.

22. Respondent did not provide an accounting to D'Addario until after D'Addario complained to the State Bar.

23. After the initiation of State Bar disciplinary proceedings, Respondent produced an accounting to D'Addario on December 8, 2016.

24. On October 19, 2015, Respondent replied to the State Bar's letter in the investigation. At that time, Respondent asserted that the money advanced by D'Addario had been paid to Sale by CTA check and that, "these funds were maintained in my trust account."

25. At the time Respondent made this representation, he knew it to be false.

26. On July 14, 2016, State Bar Investigator Shelia Campbell sent Respondent a letter requesting further information and documentation relating to his trust account.

27. On August 22, 2016, Respondent replied by letter and indicated that the money had been deposited in his business account and then used to pay expenses. He also explained that business had been slow.

CONCLUSIONS OF LAW:

28. By placing personal funds into his CTA on August 19, 2014 and March 3, 2015, Respondent commingled funds into his CTA in willful violation of Rules of Professional Conduct, rule 4-100(A).

29. By placing funds Respondent should have held in trust on behalf of his client, or his client's wife, into Respondent's general business account, he failed to deposit entrusted funds into a client trust account in willful violation of Rules of Professional Conduct, rule 4-100(A).

30. By depositing entrusted funds into his general account, and then using \$3,225.51 of those funds for his own purposes, Respondent misappropriated his client's funds and thereby committed an act of moral turpitude, dishonesty, or corruption in willful violation of Business and Professions Code, section 6106.

31. By representing to the State Bar that the entrusted funds had been maintained in his trust account when he knew that statement to be false, Respondent committed an act of moral turpitude, dishonesty, or corruption in willful violation of Business and Professions Code, section 6106.

32. By failing to render an accounting to the client after the client's requests to do so on May 12, 13, and 19, 2015, Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

33. By failing to promptly disburse an entrusted sum as directed by his client, Respondent willfully violated Business and Professions Code, section 4-100(B)(4).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent has failed to deposit, failed to account, failed to pay out, and misappropriated client funds. When confronted, he also made a material misrepresentation to the State Bar during the investigation. These represent distinct and separate acts of misconduct. Multiple acts of wrongdoing are an aggravating factor. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168.)

MITIGATING CIRCUMSTANCES.

Absence of Prior Misconduct: Respondent has been admitted to practice law since June 1982 and has been active at all times since. Respondent has been discipline free for approximately 32 years of practice from admission to the earliest misconduct herein (2014) and is therefore entitled to significant mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596.)

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 significant 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 Spaitth* (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 Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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

Standard 2.1 presumes disbarment for misappropriation unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate. The amount misappropriated is not insignificant and compelling mitigation is absent. Therefore, disbarment is the presumed sanction.

Standard 2.2(a) applies to Respondent’s commingling client funds in his CTA and for failing to promptly pay out entrusted funds. That Standard presumes an actual suspension of three months. Standard 2.2(b) applies to the failure to account and presumes suspension or reproof.

Standard 2.11 applies to Respondent’s misrepresentation to the State Bar during the disciplinary investigation and presumes a sanction of disbarment or actual suspension.

Standard 2.12 states that disbarment or actual suspension is the presumed sanction for a violation of Business and Professions Code section 6068(a).

Standard 1.7(a) states that where two or more Standards apply to Respondent’s misconduct, the most severe should be imposed. Here, that is Standard 2.1 which presumes disbarment.

While Respondent has significant mitigation in the form of prior discipline-free practice, the mitigating weight is somewhat diminished in this matter. Discipline-free practice is mitigating because it tends to indicate that the misconduct is aberrational. Here, Respondent engaged in misconduct over a prolonged

period. Moreover, the misrepresentation to the State Bar evidences an intent to conceal and avoid the consequences of his misconduct. Further, the weight in mitigation must be balanced against Respondent's multiple acts and refusal to account despite repeated requests. On balance, the mitigation does not warrant deviation from the Standard. Further, the mitigation is not "compelling" within the meaning of the Standard.

Based on the extent and severity of the misconduct, Respondent should be disbarred. Doing so is necessary to protect the public, the courts, and the profession; maintain the highest professional standards, and preserve public confidence in the legal profession.

Case law is in accord. Misappropriation of client funds has long been viewed by the courts as a particularly serious ethical violation. Misappropriation breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the profession. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1035; *Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) The Supreme Court has consistently stated that misappropriation generally warrants disbarment in the absence of clearly mitigating circumstances. (*Kelly v. State Bar, supra*, 45 Cal.3d at p. 656; *Waysman v. State Bar* (1986) 41 Cal.3d 452, 457.)

The Supreme Court has imposed disbarment on attorneys with no prior record of discipline in cases involving a single misappropriation. In *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, an attorney with over 11 years of practice and no prior record of discipline was disbarred for misappropriating approximately \$29,000 in law firm funds over an 8-month period. In *Chang v. State Bar* (1989) 49 Cal.3d 114, an attorney misappropriated almost \$7,900 from his law firm, coincident with his termination by that firm, and was disbarred. (See also, *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170 [no prior record of discipline, misappropriation of approximately \$55,000 from a single client]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511 [misappropriation of nearly \$40,000, misled client for a year, no prior discipline]; *Kennedy v. State Bar* (1989) 48 Cal.3d 610 [disbarment for misappropriation in excess of \$10,000 from multiple clients and failure to return files with no prior misconduct in eight years]; and *Kelly v. State Bar, supra*, 45 Cal.3d 649 [disbarment for misappropriation of \$20,000 and failure to account with no prior discipline in seven years].)

COSTS OF DISCIPLINARY PROCEEDINGS.

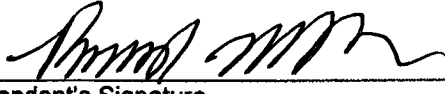
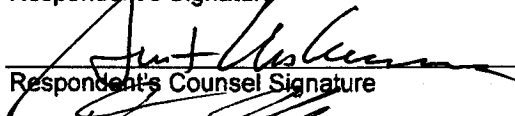

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of February 24, 2017, the discipline costs in this matter are \$3669. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: BERNARD BECKKER	Case number(s): 15-O-14452
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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>03/03/2017</u> Date	 Respondent's Signature	<u>Bernard Beckker</u> Print Name
<u>3/3/17</u> Date	 Respondent's Counsel Signature	<u>Gilbert Nishimura</u> Print Name
<u>3-3-17</u> Date	 Deputy Trial Counsel's Signature	<u>Drew Massey</u> Print Name

In the Matter of: BERNARD BECKKER	Case Number(s): 15-O-14452
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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.
1. On page 7 of the stipulation, in paragraph number 11, the year "2016" should be changed to "2014."
 2. On page 8 of the stipulation, in paragraph number 33, line 2, "Business and Professions Code section 4-100(B)(4)" is deleted, and in its place is inserted "State Bar Rules of Professional Conduct" rule 4-100(B)(4)."
 3. On page 9 of the stipulation, paragraph 7, regarding standard 2.12, is deleted as there was no violation of Business and Professions Code section 6068 subdivision (a) found in this matter.

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 Bernard Beckker 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.

March 17, 2017
Date


CYNTHIA VALENZUELA
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 March 20, 2017, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

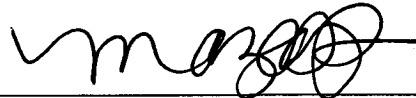
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

GILBERT MITSUO NISHIMURA
SEKI NISHIMURA & WATASE LLP
600 WILSHIRE BLVD STE 1250
LOS ANGELES, CA 90017

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

DREW D. MASSEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 20, 2017.



Mazie Yip
Case Administrator
State Bar Court