

 ORIGINAL

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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION			PUBLIC MATTER
Counsel For The State Bar Kim Kasrellovich Senior Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1378 Bar # 261766	Case Number(s): 15-O-15228	For Court use only FILED OCT 04 2016 STATE BAR COURT CLERK'S OFFICE LOS ANGELES	
Counsel For Respondent Artak Barsegyan Pansky Markle Ham LLP 1010 Sycamore Ave Unit 308 South Pasadena, CA 91030 (213) 626-7300 Bar # 279064	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: JOHN CHRISTEN TORJESEN Bar # 141664 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 **August 25, 1989**.
- (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 **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."



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - ☐ Costs 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: **three 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 **12-O-17005**
 - (b) ☒ Date prior discipline effective **November 21, 2013**
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code section 6068(m) and Rules of Professional Conduct, rule 4-100(B)(3)**
 - (d) ☒ Degree of prior discipline **Public Reprimand**
 - (e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline. For a further discussion of Prior Discipline, see pages 7-8.
- (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..

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- (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.
- (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.

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- (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

Prefiling Stipulation, page 8.

D. Discipline:

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of **two years**.
- 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 **two years**, 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

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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.

- (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: **Respondent attended Ethics School on December 4, 2014, and passed the test given at the end. Pursuant to rule 5.135, of the Rules of Procedure of the State Bar Court, this requirement is waived.**
- (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: **The protection of the public and the interests of Respondent do not require passage of the MPRE in this case. (See *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal.State Bar Ct. Rptr. 181.) Respondent took and passed the MPRE on November 1, 2014 in compliance with a disciplinary order. (See *In the Matter of Trousil* (Review Dept. 1991) 1 Cal.State Bar Ct. Rptr. 229, 244.).**

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(2) ☐ **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JOHN CHRISTEN TORJESEN

CASE NUMBER: 15-O-15228

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-15228 (Complainant: Mark Cohen and David Hillman)

FACTS:

1. On January 14, 2013, Respondent was administratively suspended from the practice of law due to his child support delinquency.
2. On January 14, 2013, while suspended, Respondent appeared in court on behalf of his client, XTC Investments, in *XTC Investments v. Jonica Stingle, et. al.*; Los Angeles County Superior Court; case number BC451733.
3. Also on January 14, 2013, in the same matter, Respondent filed an Opposition to Motion in Limine No. 1 Re Capacity to Sue, as the attorney for XTC.
4. Upon leaving court on January 14, 2013, Respondent corrected his child support delinquency.
5. On January 15, 2013, an order of compliance was transmitted from the Department of Child Support Services to the State Bar. The same day, the State Bar transmitted the order to the California Supreme Court. On January 18, 2013, the California Supreme Court issued an order lifting Respondent's suspension.

CONCLUSIONS OF LAW:

6. By appearing in court and filing a motion as the attorney for XTC Investments while suspended from the practice of law, Respondent held himself out as entitled to practice law and actually practiced law, in violation of Business and Professions Code, sections 6125 and 6126, and thereby willfully violated Business and Professions Code, section 6068(a)

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has two prior records of discipline. In case number 12-O-17005, effective November 21, 2013, in two separate client matters, Respondent failed to communicate with a client and failed to account. The misconduct occurred between March 2009 and November 2012, and the stipulation in that matter was filed October 2013. In mitigation,

Respondent had no prior discipline and offered evidence of good character. The discipline resulted in a public reproof.

In case number 13-O-16844, effective December 12, 2014, in three client matters, Respondent engaged in three acts of the unauthorized practice of law while suspended for a failure to pay child support, including conducting a trial, and failed to report sanctions to the State Bar. All the misconduct was the result of an administrative suspension in October 2013 and the stipulation was filed November 2014. In mitigation, Respondent provided evidence of good character, entered into a prefiling stipulation, and held the honest and reasonable belief that he had rectified his suspension sooner than he actually did. This discipline resulted in 30 days actual suspension.

MITIGATING CIRCUMSTANCES.

Prefiling 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).)

The applicable standard is Standard 2.10(b) which states, "Suspension or reproof is the presumed sanction when a member engages in the practice of law or holds himself or herself out as entitled to

practice law when he or she is on inactive status or actual suspension for non-disciplinary reasons, such as non-payment of fees or MCLE non-compliance. The degree of sanction depends on whether the member knowingly engaged in the unauthorized practice of law.”

Also applicable in this case is Standard 1.8(b) due to the number of Respondent’s prior disciplinary actions. Standard 1.8(b) states that disbarment is the appropriate sanction for a member who has two or more prior records of discipline. Normally, that would be applicable in Respondent’s case. However, here the appropriate sanction should be determined under the analysis provided in *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. The misconduct in all three disciplinary matters occurred between March 2009 and October 2013. Specifically, the misconduct in the first disciplinary matter (case no. 12-O-17005) occurred between March 2009 and November 2012, and the stipulation in that matter was filed October 2013. In the second disciplinary matter (case nos. 13-O-16844, et. al.), Respondent engaged in the unauthorized practice of law when he was administratively suspended in October 2013. The stipulation in that case was filed November 2014. In the present case, Respondent engaged in the unauthorized practice of law when he was administratively suspended in January 2013, prior to the administrative suspension of October 2013 which led to his discipline in the second case.

In *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 the court noted “...part of the rationale for considering prior discipline as having an aggravating impact is that it is indicative of a recidivist attorney’s inability to conform his or her conduct to ethical norms (see *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646)...” Accordingly, the Review Department considered the “totality of the findings in the two cases to determine what the discipline would have been had all the charged misconduct in this period been brought as one case.” (*Id.*)

The reasoning in *Sklar* is applicable because the actions amounting to misconduct in this case, predate the misconduct in Respondent’s second disciplinary matter. Respondent did not have the benefit of learning from his misconduct and therefore this discipline cannot be treated as though he did. Pursuant to *Sklar*, it is appropriate to consider the totality of the misconduct in all the cases combined to determine what the discipline would be had all the charged misconduct been considered collectively.

Respondent engaged in the unauthorized practice of law, like his previous disciplinary matter, but without the opportunity to correct his conduct between the two cases. As a standalone violation, Business and Professions Code section 6068(a), for violating sections 6125 and 6126, requires only a general willingness to commit and act and not a specific intent. (*In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 975.) Comparatively, this is a less egregious violation than engaging in the unauthorized practice of law as an act of moral turpitude. As such, an additional period of probation and increased stayed suspension of two years is sufficient to achieve the purposes of attorney discipline and ensure continued protection of the public.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of August 10, 2016, the prosecution costs in this matter are \$3,139. 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.

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In the Matter of:
JOHN CHRISTEN TORJESEN

Case number(s):
15-O-15228

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.

Aug. 26, 2016

Date

John C. Torjesen
Respondent's Signature

John C. Torjesen

Print Name

9-9-16

Date

Artak Barsegyan
Respondent's Counsel Signature

Artak Barsegyan

Print Name

9-13-16

Date

Kim Kasrellovich
Deputy Trial Counsel's Signature

Kim Kasrellovich

Print Name

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In the Matter of: JOHN CHRISTEN TORJESEN	Case Number(s): 15-O-15228
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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.

On page 8 of the Stipulation, first full paragraph at the top of the page, line 1, "effective December 12, 2014," is deleted. In addition, at line 7 of that same paragraph, the period after "suspension" is changed to a comma, and the following language is added: "one-year suspension, stayed; and two years' probation. Discipline was effective on April 19, 2015."

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.)**

October 4, 2016
Date

Rebecca Meyer Rosenberg
REBECCA MEYER ROSENBERG, JUDGE PRO TEM
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 October 4, 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:

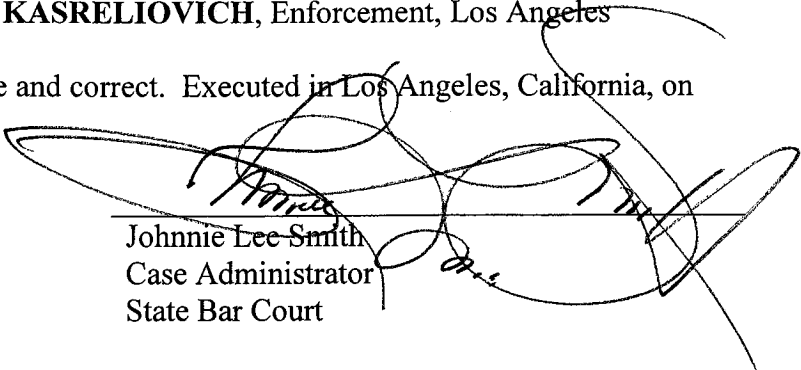
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ARTAK BARSEGYAN
PANSKY MARKLE HAM LLP
1010 SYCAMORE AVE UNIT 308
SOUTH PASADENA, CA 91030**

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

KIMBERLY G. KASRELIOVICH, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 4, 2016.



Johnnie Lee Smith
Case Administrator
State Bar Court