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

<p>Counsel For The State Bar</p> <p>William Todd Deputy Trial Counsel 1149 Hill Street Los Angeles, CA 90015 213-765-1491</p> <p>Bar # 259194</p>	<p>Case Number(s): 10-O-10242-RAP; 11-O-12242-RAP; 11-O-16571</p>	<p>For Court use only</p> <p align="center">FILED</p> <p align="center">FEB 14 2012 <i>AC</i></p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p align="center">PUBLIC MATTER</p>
<p>In Pro Per Respondent</p> <p>Errol I. Horwitz 5550 Topanga Canyon Blvd, Suite 2 Woodland Hills, CA 91367 818-347-5268</p> <p>Bar # 86098</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p>	
<p>In the Matter of: ERROL IVOR HORWITZ</p> <p>Bar # 86098</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>DISBARMENT</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 May 31, 1979.
- (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 (12) pages, not including the order.



- (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 [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
 - (a) State Bar Court case # of prior case 00-O-14413
 - (b) Date prior discipline effective November 14, 2001
 - (c) Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code section 6068 (a)
 - (d) Degree of prior discipline Private Reproval
 - (e) If respondent has two or more incidents of prior discipline, use space provided below:

02-O-13628, effective March 23, 2004, Rules of Professional Conduct rule 3-110(A), Public Reproval; 07-O-12123, effective May 14, 2011, Business and Professions Code 6068(m) and Rules of Professional Conduct rule 3-110(A), 1 year suspension stayed, 30-Day Actual Suspension, 2 years probation with conditions including the filing of quarterly reports, Ethics School, MPRE completion and Rule 9.20 compliance
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **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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- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See Stipulation Attachment, section "C", paragraph 2.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. In each of the current cases Respondent has accepted a client, accepted advance payment and then failed to complete the agreed upon task. Respondent's two prior disciplinary matters (02-O-13628 and 07-O-12123) featured identical conduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. 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 deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating 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 in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical 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 respondent no longer suffers from such difficulties or disabilities.
- (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.

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- (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. Respondent cites health-related personal difficulties involving himself, his wife, and his grandson as mitigating circumstances in this matter.
- (11) **Good Character:** Respondent's 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 convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Respondent cooperated with the State Bar in resolving this matter and is entitled to mitigation credit for entering into this comprehensive stipulation which eliminated the necessity of filing additional charges regarding investigation case no. 11-O-16571, and eliminated the necessity for trial of all three matters included in this stipulation.

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 Steve Webster in the amount of \$ 4,200.00 plus 10 percent interest per year from September 1, 2009, as records indicate Respondent was paid by Mr. Webster in the days before that date. If the Client Security Fund has reimbursed Steve Webster 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 90 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: ERROL IVOR HORWITZ

CASE NUMBER(S): 10-O-10242; 11-O-12242; 11-O-16571

A. WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties waive any variance between the Notice of Disciplinary Charges ("NDC") filed on October 13, 2011, the stipulation to facts and conclusions of law lodged January 25, 2012, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

B. FACTS AND CONCLUSIONS OF LAW

ERROL IVOR HORWITZ ("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.

1. Respondent was admitted to the practice of law in the State of California on May 31, 1979, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

Case No. 10-O-10242 (Complainant: Kris Gethin)

Facts:

2. In November 2008, Kris Gethin ("Gethin"), a United Kingdom resident and fitness industry publisher, employed Respondent to file an application for legal permanent residence and visa extension with the United States Customs and Immigration Service ("USCIS").

3. Gethin paid Respondent an advance fee of \$4,000.

4. From the time Gethin employed Respondent until on or about September 3, 2010 when Gethin terminated Respondent's employment, Gethin regularly sought updates on the status of his immigration applications.

5. Respondent intentionally misled Gethin to believe Respondent had filed the applications and was simply awaiting action by the USCIS.

6. In truth, Respondent never filed Gethin's applications with the USCIS.

7. In July 2010, Gethin advised Respondent that Gethin was purchasing real estate in the U.S. and that the lender required proof of Gethin's legal permanent resident status. However, Respondent did not disclose to Gethin that the application for this status had not yet been filed,

even though the failure to file would prevent Gethin from completing the purchase. As a result of Respondent's deception, Gethin lost his \$4,700 deposit on the attempted purchase.

8. Respondent did not provide any other services of value to Gethin prior to Gethin's termination of Respondent's employment.

9. Respondent provided a refund of Gethin's unearned advanced fee of \$4,000.00 on or about May 12, 2011, but only after Gethin had filed a complaint with the State Bar and more than 8 months after Gethin terminated Respondent's employment.

Conclusions of Law:

10. By not filing Gethin's applications for legal permanent residency or visa extension at any time in the 22 months after Gethin employed him to do so, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, a willful violation of *Rules of Professional Conduct* rule 3-110(A).

11. By repeatedly misleading Gethin to believe Respondent had filed Gethin's applications and was simply awaiting action by the USCIS when in fact Respondent filed neither application, Respondent committed acts involving moral turpitude, dishonesty or corruption, a willful violation of *Business and Professions Code* section 6106.

12. By not providing Gethin a refund of his unearned advanced fee until May 12, 2011, Respondent failed to promptly refund unearned fees paid in advance in violation of *Rules of Professional Conduct* rule 3-700(D).

Case No. 11-O-12242 (Complainant: Jose Pulido)

Facts:

13. On September 17, 2010, Jose Pulido ("Pulido"), a Venezuela resident, employed Respondent to file with USCIS an extension of his "O-1B" petition¹ and a Petition for a Nonimmigrant Worker (I-129) on his behalf, and paid Respondent an advanced fee of \$2,620.

14. From November 5, 2010 until March 8, 2011, Pulido regularly sought updates as to the status of his immigration applications via email and telephone.

15. Respondent responded by intentionally misleading or lying to Pulido by claiming that the applications had been filed and were awaiting action by the USCIS.

16. In fact, Respondent had never filed either of Pulido's applications.

17. Examples of Respondent's misleading and/or deceitful statements to Pulido include the following:

i. On November 5, 2010 and on November 24, 2010, Respondent told Pulido in phone conversations that Respondent would notify Pulido "as soon as a decision is made [on the applications]";

ii. On January 5, 2011 and on January 10, 2011, Respondent told Pulido in phone conversations that "a resolution to [Pulido's] situation was imminent";

iii. On January 26, 2011, Respondent told Pulido in a phone conversation that Pulido's "application had been approved" and that he would have the necessary documents "in a matter of days";

¹ An "O-1B" petition is for individuals with an extraordinary ability in the arts or extraordinary achievement in the motion picture or television industry.

iv. On January 31, 2011 and on February 2, 2011, Respondent told Pulido in phone conversations that the immigration documents "had not been delivered" to Respondent yet;

v. On February 4, 2011, Respondent told Pulido in a phone conversation that Respondent was "going to go to the immigration office to pick up the document" on the following business day;

vi. On February 14, 2011, Respondent told Pulido in a phone conversation that he could not get the document from the immigration office due to a "problem with the computer system at the immigration office";

vii. On February 22, 2011, Respondent told Pulido in a phone conversation that "in a few days the document should be in [his] hands";

viii. On February 22, 2011, Respondent told Pulido in a phone conversation that Respondent would have "news" for Pulido the following business day;

ix. On March 2, 2011, Respondent told Pulido in a phone conversation that "the document should arrive on March 4th".

18. On March 9, 2011, Pulido traveled to Respondent's office and Respondent admitted that he had never filed Pulido's applications.

19. Pulido terminated Respondent's employment, demanded his file and a complete refund of his unearned advanced fee; Respondent provided him with both.

Conclusions of Law:

20. By not filing Pulido's applications in the nearly 6 months after Pulido first employed him to do so, Respondent intentionally, recklessly, or repeatedly failed to perform with competence, a willful violation of *Rules of Professional Conduct* rule 3-110(A).

21. By misleading and/or deceiving Pulido into believing Respondent had filed the applications and was simply awaiting action by the USCIS, when Respondent had not done so, Respondent committed an act or acts involving moral turpitude, dishonesty or corruption, a willful violation of *Business and Professions Code* section 6106.

Case No. 11-O-16571 (Complainant: Steve Webster)

Facts:

22. In August 2009, Steve Webster ("Webster") hired Respondent to complete and process an application for an H-1B visa.

23. Webster paid Respondent an advance fee of \$5,570.00.

24. Though Respondent did initiate the filing process in September 2009, Respondent failed to ever formally file the final application with the USCIS.

25. Throughout numerous e-mail messages exchanged between August 2009 and August 2011, Respondent repeatedly claimed that he was unable to actually file the H-1B due to a lack of availability.

26. However, Respondent claims were in fact false, and the excuse provided to Webster was not true.

27. Respondent has not provided any other services of value to Webster.

28. Respondent has not refunded any of the \$5,570.00 paid to him by Webster.

29. On August 13, 2011, Webster fired Respondent.

30. Webster eventually hired another attorney to complete an EB-5 application on his behalf, as the H-1B process could no longer be completed.

Conclusions of Law:

31. By not providing Webster a refund of his unearned advanced fee until May 12, 2011, Respondent failed to promptly refund unearned fees paid in advance in violation of *Rules of Professional Conduct*, rule 3-700(D)(1).

32. By misleading and/or deceiving Webster into believing that Respondent's failure to file the complete H-1B application was for a legitimate reason even though it was not, Respondent committed acts involving moral turpitude, dishonesty or corruption, a willful violation of *Business and Professions Code* section 6106.

C. FACTS SUPPORTING AGGRAVATION

Respondent has three (3) prior records of discipline, with the most recent arising from conduct which occurred over a 4-year period from 2003 through 2007.

Respondent's actions resulted in considerable harm to his clients, all of whom relied upon respondent to complete petitions and applications with the United States Customs and Immigration Service. The harm can be described as follows:

- Gethin was forced to leave the United States on just days notice to serve a 3-year ban because Respondent failed to file the agreed upon immigration documentation. As a result of this ban, Gethin was forced to abandon his dream job as the editor-in-chief of the world's largest health and fitness website and abandon a tour scheduled to promote a book he had just written. He also lost \$4700 on a real estate purchase made in reliance upon Respondent's claim that Respondent had completely the required immigration filings.
- Pulido abandoned a \$2,500/week job with Triternal Studios due to Respondent's failure to prepare and file the agreed upon immigration documentation. Pulido also passed on an employment opportunity in his native Valenzuela because Respondent dishonestly advised Pulido that his immigration application would soon be approved.
- Webster lost an opportunity to aid filmmaker William Dickson in the promotion of a film in which Webster had invested. Webster also had to abandon the purchase of a Calabasas property due to Respondent's failures, despite numerous expenses which included at least one flight from South Africa to the United States.

D. AUTHORITIES SUPPORTING DISCIPLINE

In *In re Silverton*², the California Supreme Court held that the Standards For Attorney Sanctions For Professional Misconduct (“Standard” or “Standards”) are entitled to “great weight” and the Court will “not reject a recommendation arising from the Standards unless [it has] grave doubts as to the propriety of the recommended discipline.” The Standards are not binding but “they promote the consistent and uniform application of disciplinary measures.” (Id.) The “presumptively appropriate level of discipline” for any misconduct is as set forth in the standards.³

Standard 1.3 provides that the primary purposes of attorney discipline are, “the protection of the public, the courts and the legal profession; the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession.”

Standard 1.6(a) provides that if two or more acts of misconduct are found in the same proceeding, the sanction imposed shall be the more or most severe of the different applicable sanctions. Standard 1.6(b) provides that a greater or lesser degree of discipline than the appropriate sanction prescribed by these standards shall be imposed or recommended, depending on the net effect of the aggravating and mitigating circumstances, if any.

Standard 1.7(b) provides if “...a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

Standard 2.3 provides that the “[c]ulpability of a member of an act of moral turpitude, fraud or intentional dishonesty toward a court, client or another person. . . shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member’s acts within the practice of law.”

Standard 2.4(a) provides that culpability of a member of a pattern of wilfully failing to perform services demonstrating the member's abandonment of the causes in which he or she was retained shall result in disbarment.

Standard 2.4(b), in relevant part, provides that culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3:...(a) Sections 6067 and 6068...

Here, Standard 1.7 (b) requires that Respondent be disbarred in light of his three priors unless the most compelling mitigating circumstances clearly predominate. Here, there are no compelling mitigating circumstances.

² (2005) 36 Cal. 4th 81, 92.

³ See *Morgan v. State Bar* (1990) 51 Cal.3d 598, 607.

Caselaw:

In *Matter of Thomson*⁴, the Review Department recommended disbarment where, as in this current matter, the attorney's offenses echoed his prior record of discipline and was surrounded by bad faith, dishonesty and concealment.⁵

Similarly, in *Matter of Hunter*⁶, the Review Department noted the recurrence of misconduct, which spanned several years. The Review Department eventually recommended disbarment, both because of the recurrence of conduct and the risk of future misconduct. Again, this echoes the current matter.

F. PENDING PROCEEDINGS

The disclosure date referred to on page two, paragraph A (7) was January 24, 2012.

G. COSTS

Respondent acknowledges that the Office of Chief Trial Counsel has informed him that as of February 3, 2012, the estimated prosecution costs in this matter are approximately \$5,053.00. Respondent acknowledges that this figure is an estimate only. 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.

⁴ (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966.

⁵ *Id.*

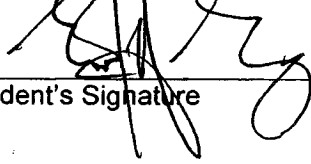
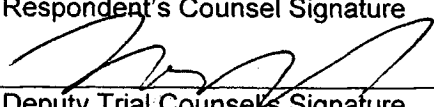
⁶ (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

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In the Matter of: ERROL IVOR HORWITZ	Case number(s): 10-O-10242-RAP; 11-O-12242-RAP; 11-O-16571
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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.

Date <u>2/7/2012</u>	Respondent's Signature 	ERROL IVOR HORWITZ Print Name
Date <u>2-8-12</u>	Respondent's Counsel Signature 	WILLIAM TODD Print Name
Date	Deputy Trial Counsel's Signature	Print Name

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In the Matter of: ERROL IVOR HORWITZ	Case Number(s): 10-O-10242-RAP; 11-O-12242-RAP; 11-O-16571
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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.

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 ERROL IVOR HORWITZ 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.

2/13/12
Date


DONALD F. MILES
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 February 14, 2012, 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:

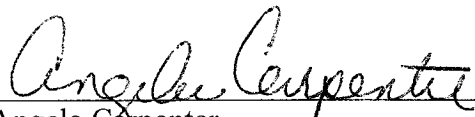
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ERROL I HORWITZ
5550 TOPANGA CANYON BLVD, SUITE 2
WOODLAND HILLS CA 91367

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

WILLIAM TODD, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 14, 2012.



Angela Carpenter
Case Administrator
State Bar Court