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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		
Counsel For The State Bar Diane J. Meyers Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1496 Bar # 146643	Case Number(s): 11-C-14942-PEM	For Court use only <div style="text-align: center; font-size: 2em; font-weight: bold;">PUBLIC MATTER</div> <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.5em; font-weight: bold;">AUG 06 2014</div> <div style="text-align: center; font-size: 0.8em;"> STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO </div>
Counsel For Respondent Susan L. Margolis Margolis & Margolis LLP 2000 Riverside Drive Los Angeles, CA 90039 (323) 953-8996 Bar # 104629	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: SHEKHAR VYAS Bar # 229853 A Member of the State Bar of California (Respondent)	(This section is merged into the previous row's content for the submission details.)	

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 **January 12, 2004**.
- (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 **13** 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."

(Effective January 1, 2014)



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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: **the two billing cycles immediately following the effective date of the Supreme Court order in this matter.** (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(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case **11-C-14940 (see Attachment to Stipulation at p. 9)**
 - (b) Date prior discipline effective **July 3, 2012**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code not involving moral turpitude but involving other misconduct warranting discipline**
 - (d) Degree of prior discipline **public reproof for one year**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) **Dishonesty:** Respondent's misconduct was intentional, 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.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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.
- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances

C. Mitigating Circumstances [see standards 1.2(g) & 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 deemed serious.
- (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 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 with a good faith belief that was honestly held and 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.

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- (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 Attachment to Stipulation at pp. 9-10.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **one year**.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the 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 **three 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 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 August 22, 2013, and passed the test given at the end of the session.**
- (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:**

Additional Probation Condition

Respondent recognizes that a repeat conviction for DUI suggests an alcohol and/or drug problem that needs to be addressed before it affects Respondent's legal practice. Respondent agrees to take the steps necessary to control the use of alcohol and/or drugs such that it will not affect Respondent's law practice in the future. Respondent's agreement to participate in an abstinence-based self-help group (as defined herein), as a condition of discipline, is part of Respondent's efforts to address such concerns.

As a condition of probation, and during the period of probation, Respondent must attend a minimum of two (2) meetings per month of any abstinence-based self-help group of Respondent's choosing, including without limitation Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T., S.O.S., etc. Other self-help maintenance programs are acceptable if they include a subculture to support recovery, including abstinence-based group meetings. (See O'Conner v. Calif. (C.D. Calif. 1994) 855 F. Supp. 303 [no First Amendment violation where probationer given choice between AA and secular program.]) Respondent is encouraged, but not required, to obtain a "sponsor" during the term of participation in these meetings.

The program called "Moderation Management" is not acceptable because it is not abstinence-based and allows the participant to continue consuming alcohol.

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Respondent must contact the Office of Probation and obtain written approval for the program Respondent has selected prior to attending the first self-help group meeting. If Respondent wants to change groups, Respondent must first obtain the Office of Probation's written approval prior to attending a meeting with the new self-help group.

Respondent must provide to the Office of Probation satisfactory proof of attendance of the meetings set forth herein with each Quarterly Report submitted to the Office of Probation. Respondent may not sign as the verifier of his or her own attendance.

Respondent is encouraged, but is not required, to participate in the Lawyers' Assistance Program, to abstain from alcohol and illegal drugs, and to undergo random urinalysis testing to complement abstinence.

officer activated his emergency light and Respondent stopped his vehicle at 1200 Sixth Avenue. The officer observed that Respondent had blood shot eyes and slurred speech, and the officer called for another officer after observing Respondent's symptoms.

6. A second officer who arrived on the scene could smell the odor of an alcohol beverage emanating from the vehicle. The officer asked Respondent if he had been drinking and Respondent admitted to drinking two beers. Respondent agreed to submit to field sobriety tests. Based on his performance during the tests, the officers determined that Respondent was under the influence of alcohol and placed Respondent under arrest.

7. At police headquarters, Respondent took two breathalyzer tests which resulted in readings of .13% and .14% BAC. A driver's license records check on Respondent was also conducted, which revealed two active suspensions on Respondent's driver's license for previously driving under the influence.

8. On May 3, 2012, Respondent voluntarily enrolled in a substance abuse rehabilitation program, and completed a 120-day program there on September 5, 2012. Subsequently, Respondent has regularly participated in an abstinence-based self-help group and according to Respondent and his treatment counselors, has abstained from alcohol consumption.

9. On December 13, 2013, Respondent paid the \$2,425 fine. On February 6, 2014, Respondent enrolled in the SB-38 program. By March 20, 2014, Respondent completed the MADD program.

CONCLUSION OF LAW:

10. The facts and circumstances surrounding the above-described violations did not involve moral turpitude but did involve other misconduct warranting discipline.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline [Standard 1.5(a)]

In State Bar case no. 11-C-14940, Respondent received a public reproof for a period of one year for his misdemeanor conviction on July 24, 2007 for violating Vehicle Code section 23152(b) (driving a vehicle with a blood-alcohol level of .08% or more with a prior) constituting other misconduct warranting discipline. Respondent had been previously convicted of driving under the influence of alcohol, a misdemeanor violation of Vehicle Code section 23152 (a) in San Diego County on October 10, 2001. Respondent stipulated to the misconduct and the level of discipline after the conviction was referred to the State Bar in June 2011.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Pre-trial stipulation.

Respondent has stipulated to facts and culpability prior to pre-trial proceedings in this matter, and thereby saved State Bar resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071,1079 [where mitigating credit was given for entering into a stipulation as to facts and culpability]).

Good character.

Respondent volunteers his time with community organizations and committees. Since 2009, Respondent has been involved with MIT Enterprise Forum, a non-profit, volunteer-driven organization which produces networking and educational programs annually for technology business executives through a network of worldwide chapters. Respondent commits 80 hours per year or more and has contributed an average of 100 hours a year or more putting on programs and supporting the chapter at various planning sessions with the operating committee and executive board. Since 2010, Respondent has been a RedCoat volunteer with the Holiday Bowl Committee in San Diego, California. Respondent participates in the sponsorship committee and commits about 70 hours a year or more. Since 2008, respondent has acted as a business advisor/domain expert with San Diego Sports Innovators which is a non-profit organization designed to help early stage companies succeed. Respondent mentors start-up companies through Springboard, a free program designed to assist science and technology companies with marketing, financial, and strategic business advice. Respondent's commitment is 150 hours a year or more. In 2014, Respondent introduced representatives of the Christopher Reeves Foundation to the Challenged Athletes Foundation to aid in obtaining grants, and to provide opportunities and support to people with physical disabilities so they can pursue active lifestyles. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359 and *Porter v. State Bar* (1990) 52 Cal.3d 518, 529 [civic service and charitable work as evidence of good character and mitigation].)

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 2.12(b) provides that suspension or reproof is appropriate for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline.

Standard 1.8 (a) provides that if a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.

Respondent's present misconduct involves his third criminal conviction of driving under the influence, but none of his convictions involved moral turpitude. In the instant matter, Respondent was cooperative with law enforcement at the time of his arrest and has complied with the conditions of his sentence and probation. Respondent's prior discipline was not remote in time and involved serious misconduct. Similar to Respondent's present misconduct, his prior misconduct involved a criminal conviction for driving under the influence stemming from a July 28, 2006 arrest and a July 24, 2007 conviction, with a prior conviction of driving under the influence of alcohol in October 2001. Through Respondent's third drunk driving conviction within an approximate 10-year period, involving his driving without a valid license, Respondent demonstrated a disrespect of the legal system and his professional obligations and a long-standing substance abuse problem from which Respondent had been unable to fully rehabilitate himself.

However, Respondent's present misconduct was committed before his prior conviction was referred to or discovered by the State Bar in June 2011, and before he was disciplined by the State Bar for the prior conviction. Thus, Respondent was not provided the "opportunity to 'heed the import of that discipline.' [Citation.]" (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 171.) Also, since Respondent's present misconduct, he has demonstrated his commitment to sobriety through his voluntary enrollment in a substance abuse rehabilitation program, his abstaining from alcohol consumption and his participation in an abstinence-based self-help group. Further, Respondent has a history of community service. Thus a one-year stayed suspension coupled with a three-year probation is sufficient to protect the public, the courts and the legal profession; maintain the highest professional standards; and preserve public confidence in the legal profession.

This recommendation is consistent with *In re Kelley* (1990) 52 Cal.3d 487 involving convictions for driving under the influence not involving moral turpitude. The attorney in *In re Kelley* was twice convicted of drunk driving following two arrests in a 31-month period. Both convictions occurred within the attorney's first four years of practice as an attorney and the second violation occurred while the attorney was on probation for the first conviction. The attorney was agitated and uncooperative with law enforcement during the arrest. Mitigating factors were no prior record, community service, and cooperation. (*Id.* at p. 495.) The Supreme Court concluded that the misconduct warranted "relatively minimal discipline" even though the crimes "were serious and involved a threat of harm to the public." (*Id.* at p. 498.) The Supreme Court concluded that a public reproof was "sufficient to protect the public from the threat of future professional misconduct." (*Ibid.*)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of July 2, 2014, the prosecution costs in this matter are \$2,447. 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 MCLE CREDIT

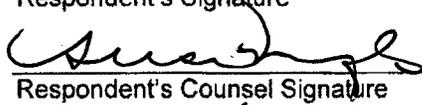
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of any educational course to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: Shekhar Vyas	Case number(s): 11-C-14942-PEM
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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>7-17-14</u> Date	 Respondent's Signature	<u>Shekhar Vyas</u> Print Name
<u>7-18-14</u> Date	 Respondent's Counsel Signature	<u>Susan L. Margolis</u> Print Name
<u>2/18/14</u> Date	 Deputy Trial Counsel's Signature	<u>Diane J. Meyers</u> Print Name

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In the Matter of: SHEKHAR VYAS	Case Number(s): 11-C-14942
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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.

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.)**

August 5, 2014
Date



GEORGE E. SCOTT, 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 San Francisco, On August 6, 2014, 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 San Francisco, California, addressed as follows:

SUSAN LYNN MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

Diane J. Meyers, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 6, 2014.


Lauretta Cramer
Case Administrator
State Bar Court