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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
Counsel For The State Bar  Meredith A. McKittrick 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1204  Bar # 234484	Case Number(s): 12-O-14397	For Court use only  <b>FILED</b>  <b>JAN 15 2013</b> <b>STATE BAR COURT</b> <b>CLERK'S OFFICE</b> <b>LOS ANGELES</b>
In Pro Per Respondent  Hoa Phu Truong 10221 Slater Ave. Ste. 202 Fountain Valley, CA 92708 (714) 963-7335  Bar # 156411	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Hoa Phu Truong  Bar # 156411  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 December 27, 1991.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 11 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

Effective January 1, 2011)



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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):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: Costs to be paid in equal amounts prior to February 1 for the following two (2) 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 [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** [see standard 1.2(f)]
- (a)  State Bar Court case # of prior case 05-O-02918 and 05-O-02922.
  - (b)  Date prior discipline effective February 9, 2008.
  - (c)  Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct rule 3-110(A), and 3-700(D)(2) and Business and Professions Code section 6068(m). Rules of Professional Conduct rule 3-700(D)(2). (See Attachment page 8 for further details.)
  - (d)  Degree of prior discipline Two years' stayed suspension, two years' probation, and two months' actual suspension.
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (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.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.

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- (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.
- (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.
- (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 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 convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

See Attachment page 8.

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of Two (2) years..
- 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 1.4(c)(ii) 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:
- (b)  The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent must be placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3)  **Actual Suspension:**

- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of 90 days.
- 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 1.4(c)(ii), 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:

**E. Additional Conditions of Probation:**

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

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- (3)  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.
- (4)  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.
- (5)  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.

- (6)  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.
- (7)  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.
- (8)  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 Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (9)  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.
- (10)  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 during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without**

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**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)  **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.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she 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 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5)  **Other Conditions:**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      Hoa P. Truong

CASE NUMBER(S):                      12-O-14397

**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. 12-O-14397 (Complainant: Tommy Viet Nguyen)

FACTS:

1. On October 7, 2009, Tommy Viet Nguyen (“Nguyen”) and Phung Ngoc Duong (“Duong”) were involved in an automobile accident. Nguyen was driving, Duong was his passenger.
2. On or about October 20, 2009, Nguyen and Duong employed Respondent to represent them in their claims arising from the automobile accident. Respondent agreed to represent both the driver, Nguyen, and the passenger, Duong.
3. Respondent failed to inform Nguyen of the potential conflicting interests of the driver, Nguyen, and the passenger, Duong.
4. Respondent accepted representation of Nguyen, the driver, and Duong, the passenger, without obtaining informed written consent of Nguyen as to the potential conflict of interests.
5. On August 11, 2010, having concluded that Nguyen was at fault for the accident, Respondent withdrew from his representation of Nguyen.
6. Respondent continued to represent Duong.
7. In September 2010, Respondent made a claim on behalf of Duong with Nguyen’s insurance company.
8. On August 23, 2011, Respondent filed suit on behalf of Duong against Nguyen and others in Orange County Superior Court case number 30-2011-00205192-CU-PA-CJC in the matter entitled *Duong v. Nguyen, et al.*

CONCLUSIONS OF LAW:

9. By accepting and continuing representation of Nguyen, the driver, and Duong, the passenger, without Nguyen’s informed written consent regarding the potential conflict of interests, Respondent accepted representation of more than one client in a matter in which the interests of the clients

potentially conflicted without the informed written consent of each client in willful violation of Rules of Professional Conduct, rule 3-310(C)(1).

10. By continuing representation of Duong without obtaining Nguyen's informed written consent upon determining that Nguyen was at fault for the accident, Respondent continued employment adverse to a former client where, by reason of the representation of the former client, Respondent had obtained confidential information material to the employment, without the informed written consent of the former client in willful violation of Rules of Professional Conduct, rule 3-310(E).

#### **ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline:** Respondent was disciplined pursuant to stipulation effective February 9, 2008, for misconduct in two client matters. As to one client, Respondent intentionally, recklessly, or repeatedly failed to perform work with competence, failed to inform the client of significant developments in the client's legal matter, and failed to return unearned advanced fees. As to the other client, Respondent failed to refund unearned advanced fees.

#### **ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.**

**Additional Mitigating Circumstances:** Respondent has entered into a stipulation before a Notice of Disciplinary Charges has been filed thereby saving the time and resources of the State Bar Court, and is receiving slight mitigation for doing so. (*See In the matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr 151,156; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190; see also *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079.)

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (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.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Standard 2.10 provides that the range of discipline to be imposed for violations not specified in another standard at between reproof and suspension, with consideration to gravity of offense, harm to

victim, and the purposes of discipline set forth in Standard 1.3. As Respondent's violations here are not specified in another standard, Standard 2.10 is the appropriate standard to apply to those violations.

Standard 1.7(a) states that discipline after a finding of culpability for misconduct when the member has one prior record of misconduct shall result in greater discipline than that which was imposed in the previous matter "unless the prior discipline was so remote in time and the prior offense so minimal in severity that progressively increasing discipline would result in manifest injustice."

The combined effects of Standard 2.10 and Standard 1.7(a) demand a level of discipline in this matter above the two-year stayed suspension, two years' probation and two months' actual suspension that was previously imposed upon Respondent.

In *Connor v. State Bar* (1990) 50 Cal. 3d 1047, the Supreme Court imposed a public reproof on an attorney who, in an effort to assist a client to avoid foreclosure, acquired title to the client's property, obtained a home equity loan on the property, paid the proceeds of that loan to the client to enable the client to make the necessary payments to avoid foreclosure. After foreclosure was avoided the attorney would quit claim his interest in the property back to the client, who would continue to make payments on the loan. After this plan was initially carried out, the client ceased making payments on the loan. The attorney made payments for a time then stopped making payments as well. At that point the attorney withdrew from representation of the client. The attorney never provided the client with a written explanation of the potential conflict involved in the transaction, and did not advise the client to seek independent counsel regarding the transaction. In mitigation the Court gave credit for the attorney's 16 years in practice without any record of prior discipline, the fact that this was an isolated incident of misconduct, and client's consent, relative sophistication, and the fact that the attorney believed he was acting in the client's best interest.

In *Hawk v. State Bar* (1988) 45 Cal. 3d 589, the Supreme Court imposed discipline in the form of a four-year stayed suspension, four years' probation, and a six-month actual suspension on an attorney who took as payment of legal fees on two separate occasions promissory notes secured by a deed of trust on real property owned by the clients. The attorney did not disclose and transmit the terms of these agreements in writing, did not advise his clients to have the transaction reviewed by independent counsel and give them the opportunity to do so, and did not provide the clients with copies of the documents executed. In aggravation the Court considered the attorney's record of two prior impositions of discipline, and his poor attitude toward the disciplinary proceedings. The Court further considered the attorney's conduct in misleading his clients with regard to when they needed to meet their obligations under the note, and the attorney's changing the terms of the first note. In mitigation the Court considered the testimony of character witnesses, and that the particular issues involved in this case appeared to be issues of first impression, not a well established rule.

Analogy can be drawn between the nature of the current matter and the nature of the violations in both *Connor* and *Hawk*. In this matter the appropriate level of discipline should fall somewhere between that imposed in *Connor* and that imposed on *Hawk*. Unlike *Connor*, Respondent here has a prior record of discipline which should be considered in aggravation. Further, Standard 1.7(a) dictates a level of discipline increased from that which was imposed in Respondent's prior imposition of discipline. But, it appears appropriate that the discipline in this matter should not rise to the level of that imposed in *Hawk*, as there are no apparent elements of misleading or moral turpitude involved in this matter, and Respondent is cooperative.

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was December 21, 2012.

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 21, 2012, the prosecution costs in this matter are \$2,865.00. 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**

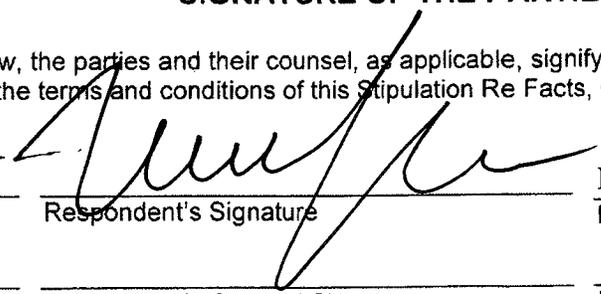
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, and / or any other educational courses to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: Hoa P. Truong	Case number(s): 12-O-14397
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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>12/26/2012</u>		<u>Hoa P. Truong</u>
Date	Respondent's Signature	Print Name
<u>12/20/12</u>		<u>Meredith A. McKittrick</u>
Date	Respondent's Counsel Signature	Print Name
<u>12/20/12</u>		<u>Meredith A. McKittrick</u>
Date	Deputy Trial Counsel's Signature	Print Name

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In the Matter of: Hoa P. Truong	Case Number(s): 12-O-14397
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### ACTUAL 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.)**

Date

1-11-13

  
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 Los Angeles, on January 15, 2013, 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:

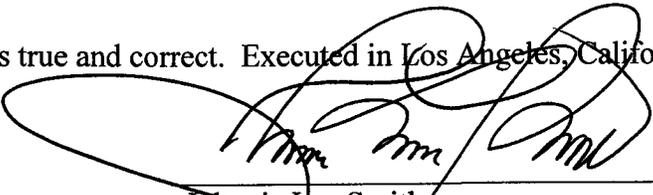
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

HOA P. TRUONG  
TRUONG AND ASSOCIATES  
10221 SLATER AVE STE 202  
FOUNTAIN VALLEY, CA 92708

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

Meredith A. McKittrick, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 15, 2013.



Johnnie Lee Smith  
Case Administrator  
State Bar Court