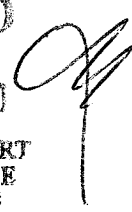


State Bar Court of California  
Hearing Department  
Los Angeles

**PUBLIC MATTER**

**ORIGINAL**

|  |  |   |
|--|--|---|
| <p>Counsel For The State Bar</p> <p><b>Erin McKeown Joyce</b><br/>Deputy Trial Counsel<br/>State Bar of California<br/>1149 South Hill Street<br/>Los Angeles, CA 90015-2299<br/>Telephone: (213) 765-1356<br/>Facsimile: (213) 765-1319</p> <p>Bar # 149946</p> | <p>Case Number (s)<br/>07-O-11143-RAP<br/>07-O-13856-RAP<br/>07-O-14730-RAP</p>  | <p>(for Court's use)</p> <p><b>FILED</b></p> <p>AUG 27 2010</p> <p>STATE BAR COURT<br/>CLERK'S OFFICE<br/>LOS ANGELES</p>  |
| <p>Counsel For Respondent</p> <p><b>David Alan Clare</b><br/>444 West Ocean Blvd., Suite 800<br/>Long Beach, CA 90802<br/>Telephone: (562) 624-2837<br/>Facsimile: (562) 624-2838</p> <p>Bar # 44971</p>   | <p>Submitted to: <b>Assigned Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND<br/>DISPOSITION AND ORDER APPROVING</p> <p><b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> |   |
| <p>In the Matter Of:<br/><b>James Stuart Lohead</b></p> <p>Bar # 146932</p> <p>A Member of the State Bar of California<br/>(Respondent)</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 **June 11, 1990**.
- (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."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



(Do not write above this line.)

- (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 added to membership fee for calendar year following effective date of discipline.
  - costs to be paid in equal amounts prior to February 1 for the following membership years: **2012 and 2013** (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - costs 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-C-1740**
  - (b)  Date prior discipline effective **not yet effective**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code section 6068(a) - violation of Penal Code Section 646.9(A) - stalking.**
  - (d)  Degree of prior discipline **public reproof with two (2) year reproof period and standard conditions.**
  - (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 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.
- (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.

(Do not write above this line.)

- (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. **Respondent has worked with the State Bar to resolve these matters with this Stipulation.**
- (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.
- (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**

#### D. Discipline:

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of **one (1) 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 1.4(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:

The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent is 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)

#### 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,

(Do not write above this line.)

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: .
- (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 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2)  **Other Conditions:**

**The Attachment to the Stipulation re Facts, Conclusions of Law and Disposition comprises pages 6 through 10.**

## ATTACHMENT TO

### STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

**In the Matter of James Stuart Lohead**  
**Case Nos. 07-O-11143, 07-O-13856 and 07-O-14730**

#### **PENDING PROCEEDINGS:**

The disclosure date referred to on page two, paragraph A.(7), was August 3, 2010.

**Case No 07-O-11143**

#### **FACTS**

Respondent admits that the following facts are true and that he is culpable of a violation of Rule of Professional Conduct 4-100(B)(3) as follows:

1. On December 18, 2006, Eleuterio Sanchez ("Sanchez") hired Respondent to process several eviction matters. Sanchez met with Rose Urbina (Respondent's paralegal) in Respondent's law office, and Urbina provided Sanchez with Respondent's business card. Sanchez paid Urbina \$5,000 as Respondent's legal fee. The receipt Sanchez received reflected that the \$5,000 fee was paid for a "civil lawsuit/court representation." Sanchez noted on the memo line of the check that the payment was for Respondent's services.

2. On February 2, 2007, Sanchez met Respondent in person for the first time and employed Respondent to prepare six eviction matters and one civil matter. Sanchez paid Respondent \$11,000 in advanced fees.

3. A few days later, no later than February 5, 2007, Sanchez terminated Respondent, and demanded a refund of his advanced fees.

4. Despite receiving Sanchez' notice of termination and Sanchez' request for a refund of unearned fees, Respondent did not account to Sanchez for the advanced fees paid by Sanchez until the State Bar intervened.

#### **CONCLUSIONS OF LAW**

By failing to provide an accounting to Sanchez after Sanchez terminated Respondent and requested a refund of unearned fees, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession in wilful violation of Rule of Professional Conduct 4-100(B)(3).

**Case No. 07-O-13856**

#### **FACTS**

Respondent admits that the following facts are true and that he is culpable of a violation of Rule of Professional Conduct 4-100(B)(3) as follows:

5. On June 13, 2006, the husband of Ince Arias ("Arias") filed a petition for marital dissolution.

6. On July 26, 2006, Arias went to Respondent's office for a consultation about her dissolution matter. Arias met with Urbina for the purpose of obtaining legal advice concerning her dissolution matter. Arias provided Urbina with a post-dated check for \$2,500 made payable to Urbina to prepare an answer, OSC, declarations and translations *in pro per* in Arias' dissolution matter entitled *Sanchez v. Sanchez*, filed in Los Angeles County Superior Court on June 13, 2006, case no. MD032103.

7. In August 2006, Urbina met with Arias, her husband and her husband's attorney, in an attempt to negotiate a settlement agreement in the dissolution matter. Respondent was not present. No settlement was reached by the parties.

8. On September 11, 2006, Arias met with Urbina in Respondent's office and provided Urbina with a check payable to Respondent in the amount of \$5,000 for Respondent to undertake representation of Arias in her dissolution matter.

9. In late June 2007, Urbina sent a letter to Arias on Respondent's letterhead notifying her that Respondent's office had been attempting to contact Arias, but that she had not returned her calls.

10. After receiving Urbina's June 2007 letter, in July 2007, Arias terminated Respondent. At that time Arias demanded a refund from Respondent of all advanced attorney fees.

11. Despite Arias' demand for a refund of unearned fees, Respondent did not provide any accounting to Arias for her advanced fees until the State Bar intervened.

## **CONCLUSIONS OF LAW**

By failing to account to Arias for the advanced fees she paid to Respondent, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession in wilful violation of Rule of Professional Conduct 4-100(B)(3).

## **Case No. 07-O-14730**

## **FACTS**

Respondent admits that the following facts are true and that he is culpable of a violation of Rule of Professional Conduct 3-110(A) as follows:

12. On August 22, 2007, Dana Evans ("Evans") met with Urbina and Respondent and paid Respondent \$300 to prepare a bankruptcy filing.

13. On October 5, 2007, Evans paid an additional \$2,200 to Respondent to handle the bankruptcy matter. Pursuant to the attorney-client agreement, Respondent agreed to provide all legal services related to Evan's bankruptcy for \$2,500. Respondent specifically did not agree to advance the costs for filing fees.

14. Evans paid Respondent in full pursuant to the attorney-client agreement.

15. At the time of retention, Evans explained the importance of promptly filing the bankruptcy petition for Evans to Respondent. Evans was trying to delay a foreclosure on her home. Respondent understood the urgency of Evans' legal matter and agreed to act quickly on Evans' legal matter. Respondent told Evans he planned to relocate his office in the near future, but he failed to notify her at that time of his new office address.

16. From August 2007 until November 2007, Evans left multiple telephone messages for Respondent requesting a status report on her legal matter. Respondent received Evans' messages but failed to return them.

17. Respondent failed to provide any legal services of value to Evans.

## **CONCLUSIONS OF LAW**

By failing to perform the legal services he was employed to perform for Evans, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rule of Professional Conduct 3-110(A).

## **AUTHORITIES SUPPORTING DISCIPLINE**

### **STANDARDS FOR ATTORNEY SANCTIONS**

To determine the appropriate level of discipline, the standards provide guidance. *Drociak v. State Bar* (1991) 52 Cal.3d 1085; *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119. A disciplinary recommendation must be consistent with the discipline in similar proceedings. See *Snyder v. State Bar* (1990) 49 Cal.3d 1302. Moreover, the recommended discipline must rest upon a balanced consideration of relevant factors. *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119.

Pursuant to Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct 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. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

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Pursuant to Standard 1.5 of the Standards for Attorney Sanctions for Professional Misconduct:

Reasonable duties or conditions fairly related to the acts of professional misconduct and surrounding circumstances found or acknowledged by the member may be added to a recommendation or suspension or, pursuant to rule 9.19, California Rules of Court, to a reproof. Said duties may include, but are not limited to, any of the following:

1.5(b): a requirement that the member take and pass an examination in professional responsibility;

1.5(d): a requirement that the member undertake educational or rehabilitative work at his or her own expense regarding one or more fields of substantive law or law office management;

1.5(f): any other duty or condition consistent with the purposes of imposing a sanction for professional misconduct as set forth in standard 1.3.

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Pursuant to Standard 2.10 of the Standards for Attorney Sanctions for Professional Misconduct:

Culpability of a member ... of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to 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

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Pursuant to Standard 1.6(a) of the Standards for Attorney Sanctions for Professional Misconduct:

The appropriate sanction for an act of professional misconduct shall be that set forth in the following standards for the particular act of misconduct found or acknowledged. If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.

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When more than one act of professional misconduct is acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the most severe of the different applicable standards. Standard 1.6(a).

Respondent also has one other matter which was in the Alternative Discipline Program, which is currently being effectuated. The discipline imposed is a public reproof. The misconduct in these matters took place shortly after the misconduct occurred in case No. 05-C-1740. Accordingly, the Court should consider all of the charges brought in all cases as though they had been brought together to determine the appropriate discipline. *In the Matter of Freydl*, 4 Cal. State Bar Ct. Rptr. 349 (2001); see *In the Matter of Sklar*, 2 Cal. State Bar Ct. Rptr. 602,

619 (1993). The stipulated discipline is sufficient when considering all of Respondent's misconduct.

## **DISMISSALS**

The State Bar dismisses Count One, Count Three, Count Four and Count Seven in the interests of justice.

## **COSTS OF DISCIPLINARY PROCEEDINGS:**


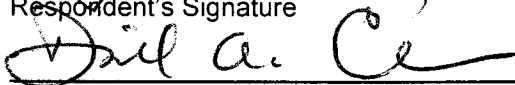
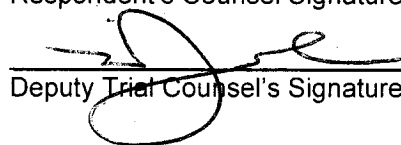
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of August 3, the prosecution costs in this matter are \$3,582.81. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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| In the Matter of<br><b>James Stuart Lohead</b> | Case number(s):<br><b>07-O-11143, 07-O-13856, and 07-O-14730</b> |
|--|--|

### 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 Fact, Conclusions of Law and Disposition.

|                       |   |   |
|-----------------------|---|---|
| <u>8/3/10</u><br>Date | <br>Respondent's Signature          | <u>James S. Lohead</u><br>Print Name    |
| <u>8/3/10</u><br>Date | <br>Respondent's Counsel Signature   | <u>David Alan Clare</u><br>Print Name   |
| <u>8-3-10</u><br>Date | <br>Deputy Trial Counsel's Signature | <u>Erin McKeown Joyce</u><br>Print Name |

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|  |  |
|--|--|
| In the Matter Of<br><br><b>James Stuart Lohead</b> | Case Number(s):<br><br><b>07-O-11143, 07-O-13856, and 07-O-14730</b> |
|--|--|

**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.

*PAGE 2 - B. (1)(b) - DELETE - "NOT YET EFFECTIVE."  
Add - "8-26-10."*

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 135(b), 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.)**

08-27-10  
Date

  
\_\_\_\_\_  
Judge of the State Bar Court  
**RICHARD A. PLATEL**

**CERTIFICATE OF SERVICE**

[Rule 62(b), Rules Proc.; 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 August 27, 2010, 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:

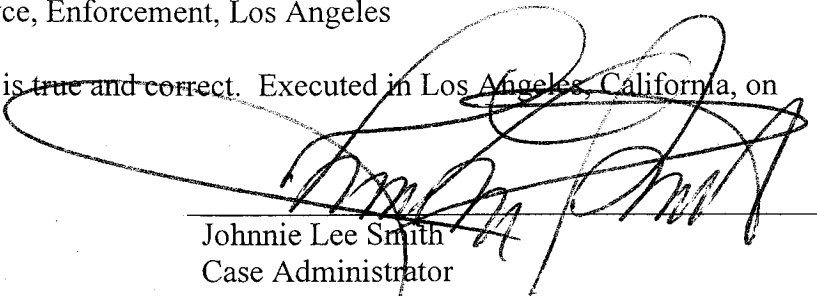
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID ALAN CLARE  
DAVID A CLARE, ATTORNEY AT LAW  
444 W OCEAN BLVD STE 800  
LONG BEACH, CA 90802

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

Erin M. Joyce, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 27, 2010.



\_\_\_\_\_  
Johnnie Lee Smith  
Case Administrator  
State Bar Court