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State Bar Court of California  
Hearing Department  
Los Angeles  
STAYED SUSPENSION

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Cindy McCaughey, DTC Office of Chief Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 213/765-1491</p> <p>Bar # 222126</p>	<p>Case Number(s): 08-O-12071</p>	<p>For Court use only</p> <p><b>FILED</b></p> <p>MAR 29 2011</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Cesar A. Lopez 8280 Florence Ave., Ste 220 Downey, CA 90240 562/869-8296</p> <p>Bar # 195868</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND 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: Cesar A. Lopez</p> <p>Bar # 195868</p> <p>A Member of the State Bar of California (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 5, 1998.
- (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."



- (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: 2012 and 2013 (two). (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 04-O-12830
  - (b)  Date prior discipline effective March 31, 2005
  - (c)  Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct, rule 3-110(A), Business and Professions Code section 6068(m), Rules of Professional Conduct rule 3-700(D)(1), Rules of Professional Conduct, rule 3-700(D)(2).
  - (d)  Degree of prior discipline Private Reprimand
  - (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. In addition to the financial harm caused by Respondent's retaining the \$4,000 fee, by not communicating with his client, the client did not learn that his appeal was final until well after the Statute of Limitations for filing a petition for writ of habeas corpus in federal court.

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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**

#### 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 1.4(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 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.

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- (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 checked="" 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:**

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In the Matter of: Cesar A. Lopez	Case Number(s): 08-O-12071
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### Financial Conditions

#### a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Santiago Nunez	\$4,000.00	June 16, 2005

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than September 1, 2011.

#### b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- 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.

#### c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

- b. Respondent has kept and maintained the following:
    - i. A written ledger for each client on whose behalf funds are held that sets forth:
      - 1. the name of such client;
      - 2. the date, amount and source of all funds received on behalf of such client;
      - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
      - 4. the current balance for such client.
    - ii. a written journal for each client trust fund account that sets forth:
      - 1. the name of such account;
      - 2. the date, amount and client affected by each debit and credit; and,
      - 3. the current balance in such account.
    - iii. all bank statements and cancelled checks for each client trust account; and,
    - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
  - c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
    - i. each item of security and property held;
    - ii. the person on whose behalf the security or property is held;
    - iii. the date of receipt of the security or property;
    - iv. the date of distribution of the security or property; and,
    - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

**d. Client Trust Accounting School**

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.



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

**In the Matter of: Cesar A. Lopez  
Case Number(s): 08-O-12071**

**PENDING PROCEEDINGS**

The disclosure date referred to on page two, paragraph (A)(7) is March 1, 2011.

**FACTS:**

Respondent admits that the following facts are true and that he is culpable of violations of the specified Rules of Professional Conduct and Business & Professions Code sections as follows:

1. On June 16, 2005, court appointed appellate counsel, Anthony J. Dain (“Dain”), filed the opening brief on appeal of Emmanuel Nunez’ (“Nunez”) criminal convictions pending in the Court of Appeal, Fourth Appellate District in *People v. Emmanuel Nunez*, case no. G034585.
1. Nunez, a minor at the time, hired Respondent through Nunez’ father, Santiago Nunez, to substitute in as counsel and complete the appeal and/or petition for writ of habeas corpus.
2. On June 16, 2005 Santiago Nunez entered into a written agreement with Respondent for legal services. Respondent received a total of \$4,000 in advance fees from Santiago Nunez.
3. The fee agreement, written in Spanish, specifically described the services to be rendered by Respondent as follows: give advice, get in touch with current counsel, prepare briefs on appeal in the case, and represent Nunez in hearings on appeal.
4. Respondent took no action to substitute in as counsel on appeal.
5. Respondent did not prepare or file any pleadings on behalf of Nunez for the appeal or for any other post-conviction proceedings.
6. Between June 2005 and January 2008, Nunez, who remains incarcerated, contacted Respondent in writing numerous times seeking status updates on his appeal. Respondent received these letters but did not reply to Nunez’ inquires.
7. The Court of Appeal affirmed the trial court’s judgment on June 7, 2006 and on August 16, 2006, the Supreme Court denied a petition for writ of review.
8. On January 10, 2008, Nunez wrote to Respondent demanding an explanation about why respondent had not substituted in as counsel. Respondent received the letter and failed to reply.

9. Respondent has not refunded any part of the \$4,000 paid to him by Santiago Nunez.
10. State Bar Investigator Shelia Campbell notified Respondent in a letter dated May 29, 2008 that Nunez had filed a complaint with the State Bar relating to Respondent's conduct in handling his appeal.
11. Respondent received the State Bar's letter and failed to reply or otherwise respond to the State Bar investigation of this matter.
12. In a follow up letter dated June 16, 2008, State Bar Investigator Campbell confirmed that she received no reply from Respondent to her previous letter regarding the Nunez complaint and requested a response to the complaint no later than June 30, 2008.
13. Respondent received the State Bar's second letter of June 16, 2008 and failed to reply or otherwise respond to the State Bar investigation.

#### **CONCLUSIONS OF LAW:**

1. By failing to substitute in as counsel for Nunez and failing to perform any legal services of value for Nunez, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, Rule 3-110(A).
2. By failing to advise Nunez that Respondent did not substitute in as counsel and would not pursue the appeal or any writ as agreed, Respondent failed to keep a client reasonably informed of significant developments in a matter which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).
3. By failing to return any part of the \$4,000 advance fee upon the effective termination of his employment, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, Rule 3-700(D)(2).
4. By failing to provide a written response to Nunez' complaint, or otherwise cooperate with the State Bar's investigation, Respondent failed to cooperate and participate in a disciplinary investigation pending against him in willful violation of Business and Professions Code section 6068(i).

#### **WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY**

The parties waive any variance between the Notice of Disciplinary Charges filed on January 6, 2011 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 a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

### **COSTS OF DISCIPLINARY PROCEEDINGS**

Respondent acknowledges that the Office of Chief Trial Counsel has informed him that as of March 1, 2011, the prosecution costs in this matter are estimated to be \$2,426.00. 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.

### **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. In this case, the applicable Standards for Attorney Sanctions for Profession misconduct include 1.3, 1.7(a), 2.4 and 2.6

Standard 1.3 provides in pertinent part that the “primary purposes of disciplinary proceedings ... and of sanctions imposed upon a finding or acknowledgement of a member’s professional misconduct are the protection of the public, the courts and legal profession; the maintenance of high standards by attorneys and the preservation of public confidence in the legal profession.”

Pursuant to Standard 1.7(a):

(a) 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 one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

Pursuant to Standard 2.4:

Culpability of a member of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of willfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Pursuant to Standard 2.6, culpability of a member of a violation of section 6068 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.

While the Standards provide guidance, a disciplinary recommendation must be consistent with the discipline in similar proceedings. *See Snyder v. State Bar* (1990) 49 Cal.3d 1302.

In *Matter of Aguiluz* (Review Dept.1992) 2 Cal.State Bar Ct.Rptr. 32, the attorney was given one year stayed suspension and two years probation for failing to perform competently and abandonment of the clients' case without notifying them, returning their file, or shielding their rights from foreseeable prejudice in a single matter. The attorney denied to his clients that he had withdrawn as their counsel and refused to give the clients their file until they paid him additional fees. Both mitigating and aggravating circumstances were found, but the attorney had no prior discipline.

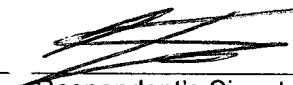
Moreover, the recommended discipline must rest upon a balanced consideration of relevant factors. *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119. In this case, the parties submit a stayed suspension is appropriate with the conditions of probation attached herein.

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In the Matter of: Cesar A. Lopez	Case number(s): 08-O-12071
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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.

03/17/11            Cesar A. Lopez  
Date      Respondent's Signature      Print Name

3/17/11            Cindy McCaughey  
Date      Deputy Trial Counsel's Signature      Print Name

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In the Matter of:  
Cesar A. Lopez

Case Number(s):  
08-O-12071

### 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.

*PAGE 7 - FINANCIAL CONDITIONS - SECTION (a):  
DELETE THE DATE - " SEPTEMBER 1, 2008 "  
Add: " WITHIN 90 DAYS AFTER THE EFFECTIVE DATE  
OF THE SUPREME COURT ORDER IN THIS MATTER "*

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

*03-22-11*

Judge of the State Bar Court

*[Signature]*  
RICHARD A. PLATEL

**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 March 29, 2011, 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:

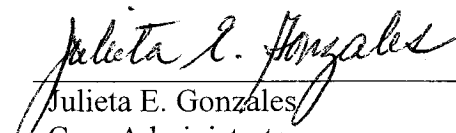
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

CESAR A LOPEZ ESQ  
8280 FLORENCE AVE STE 220  
DOWNEY, CA 90240

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

Cynthia B. McCaughey, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 29, 2011.

  
\_\_\_\_\_  
Julieta E. Gonzales  
Case Administrator  
State Bar Court