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**ORIGINAL**

**State Bar Court of California  
Hearing Department  
San Francisco**



<p>Counsel For The State Bar</p> <p>Treva R. Stewart Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105</p> <p>Bar # 239829</p>	<p>Case Number (s) 10-C-3931; 10-C-3739; 08-C-14618</p> <p><b>PUBLIC MATTER</b></p>	<p>(for Court's use)</p> <p><b>FILED</b> <i>[Signature]</i></p> <p>JUL 27 2010</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Jonathan I. Arons 221 Main Street, Suite 740 San Francisco, CA 94105</p> <p>Bar # 111257</p>	<p>Submitted to: <b>Assigned Judge</b></p>	
<p>In the Matter Of: Kent Tierney</p> <p>Bar # 186685</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

**Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.**

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted December 19, 1996.
- (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 12 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."

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- (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 284, Rules of Procedure.
  - costs to be paid in equal amounts prior to February 1 for the following membership years: three billing cycles following the effective date of the Supreme Court order  
(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
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (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. Peace officers from several law enforcement agencies had to be dispatched to apprehend respondent, creating a burden on the personnel and resources of said agencies.
- (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. In his criminal proceedings, respondent admitted to culpability and was proactive in reaching resolution with the District Attorney's office.
- (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. See Mitigation Section in Stipulation Attachment.
- (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 four 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 four 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 two 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:

**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 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.
- (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 checked="" 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 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)  **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.

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- (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: November 6, 2009.
- (5)  **Other Conditions:** See Stipulation Attachment.

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

IN THE MATTER OF:                      KENT TIERNEY

CASE NUMBER(S): ET AL.            10-C-3931; 10-C-3739; 08-C-14618

**FACTS AND CONCLUSIONS OF LAW**

Facts

10-C-3931

On May 28, 2005, respondent was arrested and charged with violation of vehicle code section (VC) 23152(A), driving while under the influence of alcohol. On August 30, 2005 respondent was convicted of violation of VC 23152(A). He was sentenced to ten days imprisonment in county jail and four years court probation. Respondent's probation was in effect until August 29, 2009. He completed his county jail time.

10-C-3739

On October 1, 1998, respondent was arrested and charged with violation of VC 23152(A)(B), driving while under the influence of alcohol with a blood alcohol (BAC) in excess of .08. On December 1, 1998 respondent was convicted of violation of VC 23152(B). He was sentenced to four days in county jail and placed on court probation for three years. He completed his sentence and probation without incident.

08-C-14618

1. On March 5, 2008, respondent was observed by a peace officer on southbound interstate 680 (I-680), in the city of Dublin, following another vehicle in close proximity at a speed of approximately 70 mph, in light traffic conditions.
2. The peace officer, who was in a distinctively marked motor vehicle, caught up with respondent's vehicle. He activated the patrol vehicle's emergency lights in an attempt to enforce a stop of respondent's vehicle.
3. Respondent recognized the peace officer's motor vehicle and saw its emergency lights, however he did not pull over.
4. The peace officer also sounded the motor vehicle's siren. Respondent heard the siren, however, he did not pull over.
5. Respondent drove at speeds up to in excess of 120 mph on a public highway to evade the peace officer.

6. Respondent changed lanes and drove on the center divider and the right shoulder to pass traffic in order to evade the peace officer.
7. Respondent exited I-680 at Andrade Road. He drove through a stop sign at approximately 20 mph, nearly colliding with a pick-up truck. He entered northbound I-680.
8. As a result of respondent's conduct, additional peace officers from different law enforcement agencies were dispatched to assist.
9. Respondent exited I-680 at Sunol Boulevard, at which point, visual contact of him was lost.
10. After taking the exit, respondent drove to a residential neighborhood where he parked, locked and walked away from his vehicle.
11. The pursuit was terminated and a perimeter check ensued. Respondent was located a short time later by one of the peace officers who were searching the surrounding area for him.
12. Respondent was taken into custody.
13. A search of respondent's vehicle revealed an assault rifle and magazine in the trunk.
14. Respondent was arrested for violation of vehicle code (VC) 2800.2(A), felony evading; penal code (PC) 12280(B), possession of an assault rifle; PC 12020(A)(2), possession of high cap magazine; PC 148(A), resisting arrest; VC 14601.2(A), driving on a suspended license and VC section 23152(A)(B), driving under the influence of alcohol, with a blood alcohol (BAC) in excess of .08 or more.
15. Respondent's BAC was subsequently determined to be .15.
16. On December 12, 2008, respondent was charged in an Information with violation of VC 2800.2(a); VC 23152(a); VC 23152(b); and PC 12280(b).
17. On July 14, 2009, respondent pled to felony evasion and DUI. The other charges were dismissed. He was sentenced to 180 days confinement in county jail and five years probation. Probation conditions require respondent to, inter alia, enter or continue mental health treatment, abstain from alcohol, and attend and complete a drinking driver's program.
18. Respondent drove with a willful wanton disregard for the safety of persons and property.
19. Respondent willfully and unlawfully, with the intent to evade, fled and attempted to elude a pursuing peace officer's motor vehicle.



### Conclusions of law

As evidenced by his convictions for violation of VC 23152 on December 1, 1998, August 30, 2005 and July 14, 2009, respondent is culpable of committing a crime that did not involve moral turpitude, but did involve other misconduct warranting discipline. As evidenced by his conviction for violation of VC 2800.2(A) July 14, 2009, respondent is culpable of committing a crime that did involve moral turpitude.

### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(6), was July 12, 2010.

### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 12, 2010, the prosecution costs in this matter are approximately \$6858. 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.

### **PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING.**

This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

#### 10-C-3931

1. On August 30, 2005, respondent was convicted of violation of VC 23152(A), driving while under the influence of alcohol.
2. On May 13, 2010, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: a hearing and decision recommending the discipline to be imposed in the event the hearing department finds the facts and circumstances surrounding respondent's conviction of vehicle code section 23152(A) (DUI), involved moral turpitude or other circumstances warranting discipline.

#### 10-C-3739

1. On December 1, 1998, respondent was convicted of violation of VC 23152(B), driving while under the influence of alcohol with a BAC in excess of .08.
2. On June 11, 2010, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: a hearing and decision recommending the discipline to be imposed in the event the hearing department finds the facts and circumstances surrounding respondent's conviction of vehicle code section 23152(B) (driving with a BAC of .08 or more), involved moral turpitude or other circumstances warranting discipline.

#### 08-C-14618

1. On July 14, 2009, respondent was convicted of violation of VC 2800.2(A), felony evasion and VC 23152(B), driving under the influence of alcohol with a BAC in excess of .08.
2. On November 17, 2009, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: a hearing and decision recommending the discipline to be imposed in the event the hearing department finds the facts and circumstances surrounding respondent's conviction of vehicle code section 2800.2(A) and 23152(B), involved moral turpitude or other circumstances warranting discipline

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

Standard 3.2 states:

Final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission shall result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a two-year actual suspension, prospective to any interim suspension imposed, irrespective of mitigating circumstances.

*People v. Dewey*, (1996) 42 Cal.App.4<sup>th</sup> 216 states that felony violation of VC 2800.2(A) is a crime involving moral turpitude per se.

#### **AGGRAVATING CIRCUMSTANCES.**

See Stipulation Form.

#### **MITIGATING CIRCUMSTANCES.**

1. Between 2003 and 2004 respondent experienced substantial family and emotional difficulties which contributed to his abuse of alcohol. His mother, for whom he provided care, died from cancer and he went through a divorce from his first wife.
2. Respondent has been actively treating for his alcoholism since his arrest in March 2008. In approximately April 2008, respondent voluntarily entered a 30 day residential rehabilitation facility. He also began attending AA meetings and obtained a sponsor. Pursuant to his probation conditions, respondent has been treating with a licensed addiction specialist, enrolled in an 18 month DUI program in January 2010, and enrolled in an intensive outpatient program in April 2010.

#### **ADDITIONAL MITIGATING CIRCUMSTANCES.**

See Stipulation Form.

#### **STATE BAR ETHICS SCHOOL.**

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

#### **RESTRICTIONS WHILE ON ACTUAL SUSPENSION.**

During the period of actual suspension, respondent shall not:

Render legal consultation or advice to a client;

Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;

Appear as a representative of a client at a deposition or other discovery matter;

Negotiate or transact any matter for or on behalf of a client with third parties;

Receive, disburse, or otherwise handle a client's funds; or

Engage in activities which constitute the practice of law.

Respondent shall declare under penalty of perjury that he or she has complied with this provision in any quarterly report required to be filed with the Office of Probation, pertaining to periods in which the respondent was actually suspended from the practice of law.

**COMPLIANCE WITH CONDITIONS OF PROBATION IN UNDERLYING CRIMINAL MATTER.**

Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Office of Probation.

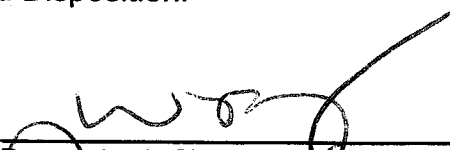
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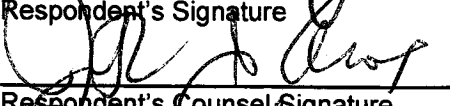
In the Matter of <b>KENT TIERNEY</b>	Case number(s): <b>10-C-3931; 10-C-3739; 08-C-14618</b>

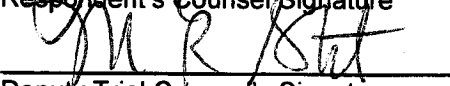
**SIGNATURE OF THE PARTIES**

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.

7/12/10  
Date  
July 12, 2010  
Date  
7/12/10  
Date

  
Respondent's Signature  
KENT TIERNEY  
Print Name

  
Respondent's Counsel Signature  
JONATHAN I. ARONS  
Print Name

  
Deputy Trial Counsel's Signature  
TREVA R. STEWART  
Print Name

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In the Matter Of <b>KENT TIERNEY</b>	Case Number(s): <b>10-C-3931; 10-C-3739; 08-C-14618</b>
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**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 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.)**

Date

July 26, 2010

Judge of the State Bar Court

**LUCY ARMENDARIZ**

## 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 San Francisco, on July 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 San Francisco, California, addressed as follows:

JONATHAN IRWIN ARONS  
LAW OFC JONATHAN I ARONS  
221 MAIN ST STE 740  
SAN FRANCISCO, CA 94105

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

TREVA STEWART , Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 27, 2010.



Laretta Cramer  
Case Administrator  
State Bar Court