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State Bar Court of California Hearing Department Los Angeles DISBARMENT		
Counsel For The State Bar Rosalba L. Gutierrez Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 213-765-1671 Bar # 270469	Case Number(s): 11-O-11102-RAH	For Court use only <div style="text-align: center;"> PUBLIC MATTER FILED DEC 29 2011 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO </div>
In Pro Per Respondent Joseph Arthur Bernal Bar # 119448	Submitted to: Settlement Judge	
In the Matter of: Joseph Arthur Bernal Bar # 119448 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 10, 1985.
- (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 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."

(Effective January 1, 2011)



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- (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 to be awarded to the State Bar.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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**
- (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:
 - I.
 - (a) 02-O-10801
 - (b) October 22, 2003
 - (c) Rules of Professional Conduct, rule 4-100(A) [Commingling]
 - (d) Public Reproval
 - II.
 - (a) 05-H-00520
 - (b) February 17, 2006
 - (c) Rules of Professional Conduct, rule 1-110 [Failure to Comply with Conditions of Reproval].
 - (d) 9 month stayed suspension and 2 years probation with conditions
 - III.
 - (a) 10-O-02305
 - (b) November 24, 2011
 - (c) 2 year actual suspension and until Respondent provides proof or rehabilitation pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
 - (d) Rules of Professional Conduct, rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]; 4-100(B)(4) [Failure to Pay Clients Funds Promptly]; and Business and Professions Code section 6106 [Moral Turpitude].

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- (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.
- (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.

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- (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:

See attachment, pages 9-10.

D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **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.
- (2) **Restitution:** Respondent must make restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____. If the Client Security Fund has reimbursed _____ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than _____ days from the effective date of the Supreme Court order in this case.
- (3) **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Joseph Arthur Bernal

CASE NUMBER(S): 11-O-11102-RAH

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. 11-O-11102 (Complainant: Joyce E. Bustos)

FACTS:

1. On November 7, 2007, Joyce E. Bustos ("Bustos") employed Respondent to enforce the judgment in her post-dissolution matter (the "Bustos matter") and paid Respondent \$5,000 in advanced attorney's fees.
2. From November 9, 2007 through May 1, 2008, Respondent sent two or three letters to opposing counsel regarding the Bustos matter, but as May 1, 2008, Respondent had not initiated any court proceedings to enforce the judgment in the Bustos matter.
3. On May 22, 2008, Bustos emailed Respondent seeking an update on the Bustos matter. In the email, Bustos told Respondent that she was running low on funds and needed to have her ex-husband's name removed from the title on her house. Respondent received the email but did not respond.
4. As of November 22, 2008, Bustos had not received any documentation from Respondent and emailed him asking for an update. In her email, Bustos reminded Respondent that it had been a year since they started the process, and she wanted the matter resolved. Respondent received the email but did not promptly respond.
5. On January 13, 2009, Respondent emailed Bustos a draft of her declaration for review.
6. On January 15, 2009, Bustos sent Respondent an email stating that there were mistakes in the declaration, including errors regarding the place of employment for her ex-husband. In the January 15,

2009 email, Bustos told Respondent that she wanted to meet with him before submitting the declaration to the court. Respondent received the email but did not respond.

7. On July 21, 2009, Respondent sent Bustos another draft of her declaration. Bustos subsequently emailed Respondent telling him that the latest draft also had errors. In addition, Bustos told Respondent that she needed to make an appointment with him to complete the required forms and documents.

8. On September 25, 2009, Bustos emailed Respondent inquiring into the status of her matter. Respondent received the email but did not provide a status update to Bustos.

9. On October 25, 2009, Respondent emailed Bustos stating that he would review her comments and get back to her within the week. As of November 18, 2009, Bustos had not heard from Respondent and emailed him asking for an update and asking if Respondent needed anything further from her. Respondent received the email but did not respond.

10. On December 2, 2009, Bustos met with Respondent regarding her matter. During the December 2, 2009 meeting, Respondent represented to Bustos that he would have documents ready to sign that week. Thereafter, Respondent failed to provide the documents.

11. On January 3, 2010, Bustos emailed Respondent stating that she had not heard from him since the December 2, 2009 meeting. In the email, Bustos also noted that the last invoice she received was in on May 14, 2008 in the amount of \$1,335. In the January 3, 2010 email, Bustos asked Respondent for an update and a timeline regarding when her matter would be resolved. Respondent received the email but did not respond.

12. On January 25, 2010, Bustos sent another email requesting an update on her matter. Respondent received the email but did not respond.

13. On May 2, 2010, Bustos emailed Respondent regarding her efforts to reach him. In the May 2, 2010 email, Bustos once again asked for an update on her matter and requested an updated invoice with the charges associated with her matter. Bustos asked Respondent to send the information to her home address within ten business days. Respondent received the email but did not provide Bustos with an update on her matter or an accounting.

14. On May 28, 2010, Bustos wrote Respondent a letter again requesting an update on her matter and an accounting of the attorney's fees paid within ten business of receipt of the letter. Respondent received the letter but did not promptly respond.

15. On June 23, 2010, Respondent wrote a letter to Bustos stating that he still needed to edit her declaration, and he would send it to her for her review. In the June 23, 2010 letter, Respondent told Bustos that he would be in touch with her the next week regarding an updated invoice.

16. On July 13, 2010, Respondent sent Bustos an updated declaration for her to review but did not provide an accounting.

17. On August 5, 2010, Respondent sent Bustos a letter requesting a response to the July 13, 2010 declaration he sent to Bustos. Bustos did not respond because she had already decided to terminate Respondent's services.

18. On September 10, 2010, Bustos hired attorney Sara Wasserstrom ("Wasserstrom") to handle the Bustos matter. On September 10, 2010, Wasserstrom telephoned Respondent and informed him that Bustos had hired her to handle the Bustos matter.

19. On September 15, 2010, Wasserstrom wrote a letter to Respondent informing him that Bustos had hired her to handle the Bustos matter. In the letter, Wasserstrom requested Bustos's file, asked for a refund of attorney's fees paid by Bustos and included a substitution of attorney signed by Bustos and Wasserstrom. Wasserstrom told Respondent that based on his last invoice and the lack of court action; it appeared that \$3,665 should be refunded to Bustos. Respondent received the letter from Wasserstrom but did not provide the file or an accounting.

20. On January 10, 2011, Bustos wrote to Respondent requesting an updated invoice and a copy of her file. Respondent received the January 10, 2011 letter but did not promptly provide the accounting and did not promptly provide the client file.

21. On February 23, 2011, Respondent sent a letter to Bustos and included an updated invoice claiming to have earned \$4,176 from the fees that Bustos had advanced. Respondent also enclosed the last revision of Bustos's declaration.

22. On March 18, 2011, Respondent provided Bustos with her file and issued a check in the amount of \$824 as the unused portion of the advanced attorney's fees.

CONCLUSIONS OF LAW

23. By failing to file anything in the Bustos matter despite having been the counsel on the matter for three years and by otherwise failing to timely handle the Bustos matter, Respondent repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

24. By failing to promptly respond to Bustos's emails and letters regarding her matter, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services in willful violation of section 6068(m) of the Business and Professions Code.

25. By not releasing the Bustos client file until six months after Wasserstrom's request for the file on Bustos's behalf, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property in willful violation of rule 3-700(D)(1) of the Rules of Professional Conduct.

26. By failing to promptly provide an accounting to Bustos despite multiple requests from Bustos and despite a request from Wasserstrom on Bustos's behalf, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession in willful violation of rule 4-100(B)(3) of the Rules of Professional Conduct.

27. By delaying until March 18, 2011 to refund the \$824 in unearned fees to Bustos, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was November 22, 2011.

ADDITIONAL FACTS IN MITIGATION

Respondent cooperated with the State Bar, acknowledged his wrongdoing, and agreed to the imposition of discipline without requiring a hearing.

Additionally, Respondent has offered the following facts in mitigation:

Respondent has contributed his time to his local church throughout the years and is part of the Knights of Columbus. Respondent was also involved with his children's Parent Teacher Organization.

Additionally, Respondent has been involved with the Boy Scouts of America, for which he currently serves as the Committee Chairman of his troop. These charitable activities demonstrate Respondent's commitment and service to his community.

Unfortunately, Respondent and his wife experienced marital difficulties in 2006. Respondent's wife filed for divorce in 2010. Respondent felt very depressed and he found it increasingly difficult to concentrate on his law practice. Respondent was proactive in seeking counseling. Currently, Respondent feels that his counselor was instrumental in helping him move past the end of his 26-year marriage. Respondent is currently working on rebuilding his life while continuing his commitment to his serving his community through the various organizations described above.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.3 provides that the primary purposes of attorney discipline are, "the protection of the public, the courts and the legal profession; the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession."

Standard 1.7(b) provides that 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 two prior impositions of discipline as defined in Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

Under standard 1.2(b), aggravating circumstances include:

- (i) the existence of prior record of discipline and the nature and extent of that record (see also standard 1.7);
- (iv) that the member's misconduct harmed significantly a client, the public or the administration of justice.

In regard to application of standard 1.7(b), in *Gary v. State Bar* (1988) 44 Cal. 3d 820, the Court noted that disbarment was appropriate when Respondent had three prior impositions of discipline. In *Gary*, Respondent was found culpable of misconduct in two client matters involving failure to perform. Respondent was admitted to the Bar in 1971. He received a private reproof in 1978 for commingling and failure to return trust funds to a client. In 1981, Respondent received 2 years probation for willful neglect, failure to return unearned fees to a client, and misappropriation of \$650 from another client. In 1985, Respondent received 2 years probation and a 9 month actual suspension for misappropriation of \$2,667.00 from a client and violation of probation for not abstaining from alcohol or participating in an alcohol recovery program.

In *Gary, id.* at 828-829, the court noted that "Each of the prior disciplinary orders provided him an opportunity to reform his conduct to the ethical strictures of the profession. His culpability [here] sadly indicates either his unwillingness or inability to do so."

In *Greenbaum v. State Bar* (1987) 43 Cal. 3d 543, 551, the court upheld a finding of disbarment by the Review Department based on standard 1.7(b) where a Respondent was found to have three prior impositions of discipline. In *Greenbaum*, the Respondent was admitted in 1968. In 1976, Respondent received 4 years probation and 3 months actual suspension for misappropriation of \$11,000.00. In 1980, Respondent received an additional 2 years of probation for commingling \$1,200.00 and \$35.00. In the third matter, between 1977 and 1980, Respondent was found culpable of failing to account and commingling in a probate matter. The Hearing Panel recommended a 1 year actual suspension. The Review Department recommended discipline consisting of disbarment based on standard 1.7(b) as this was Respondent's third imposition of discipline. The Supreme Court upheld the Review

Department's recommendation of disbarment.

In *Schullman v. State Bar* (1976) 16 Cal. 3d 361, in two matters, Respondent failed to perform and in one of the matters, he failed to return an unearned fee. The court imposed discipline consisting of disbarment. In aggravation, Respondent had a record of five prior disciplinary matters, spanning 12 years, three of which were identical to the current misconduct.

In *Marcus v. State Bar* (1980) 27 Cal. 3d 199, in one matter, Respondent was hired to handle a criminal matter on behalf of a client. During the pendency of the criminal matter, he was suspended from practice on another disciplinary matter. He substituted in counsel with the understanding that he would substitute back in after his period of suspension ended. He failed to substitute back in and failed to appear at trial. In another matter, he accepted money from a client and failed to perform. Upon his termination, he failed to return the file to the client. The court imposed discipline consisting of disbarment. In aggravation, Respondent had been disciplined for twelve prior acts of professional misconduct which were generally similar to the conduct in this matter.

In this matter, Respondent committed acts of misconduct, which resulted in his fourth disciplinary action. While Respondent presented evidence in mitigation, it does not clearly predominate and, therefore, does not support discipline less than disbarment.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of, November 21, 2011, the prosecution costs in this matter are approximately \$3,269. 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.


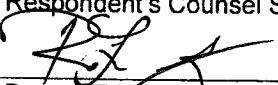
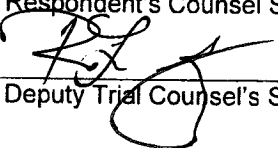
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In the Matter of:
Joseph Arthur Bernal

Case number(s):
11-O-11102-RAH

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>12/8/11</u> Date	 Respondent's Signature	<u>Joseph Arthur Bernal</u> Print Name
<u>12/9/11</u> Date	 Respondent's Counsel Signature	<u>Print Name</u>
<u>12/9/11</u> Date	 Deputy Trial Counsel's Signature	<u>Rosalba L. Gutierrez</u> Print Name

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In the Matter of: Joseph Arthur Bernal	Case Number(s): 11-O-11102-RAH
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DISBARMENT ORDER

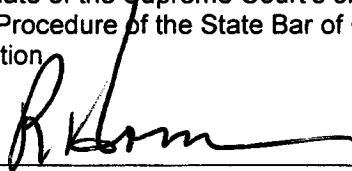
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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.)**

Respondent _____ is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

12-20-11
Date _____



Judge of the State Bar Court
RICHARD A. HERTZ

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on December 29, 2011, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

JOSEPH ARTHUR BERNAL
LAW OFC J ARTHUR BERNAL
80 S LAKE AVE #510
PASADENA, CA 91101

Courtesy Copy:

JOSEPH ARTHUR BERNAL
P. O. BOX 60696
PASADENA, CA 91116-6696

- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

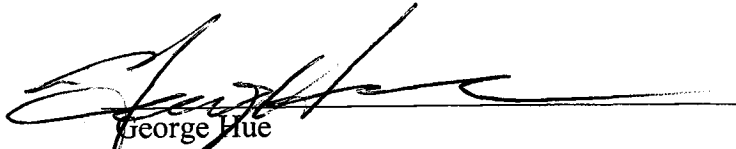
- by overnight mail at , California, addressed as follows:

- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Rosalba Gutierrez, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 29, 2011.


George Hue
Case Administrator
State Bar Court