

(Do not write above this line.)

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

| | | |
|---|--|---|
| <p>Counsel For The State Bar</p> <p>Tammy M. Albertsen Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2527</p> <p>Bar # 154248</p> | <p>Case Number(s): 12-O-10185-PEM</p> | <p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>JUL 11 2014</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p> |
| <p>Counsel For Respondent</p> <p>Thornton L. Davidson 6485 N. Palm Avenue, Suite 105 Fresno, CA 93704 (559) 478-4119</p> <p>Bar # 166487</p> | <p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> | |
| <p>In the Matter of: DAVID CURTIS HOLLINGSWORTH</p> <p>Bar # 203887</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.

kwiktag® 048 638 606



A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 6, 1999**.
- (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".

- (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: **three billing cycles following the effective date of the Supreme Court order.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. 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 or a separate attachment entitled "Prior Discipline."
- (2) **Dishonesty:** Respondent's misconduct was intentional, 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. **See attachment, page 8.**

(Do not write above this line.)

- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. 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, the public, or the administration of justice.
- (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 with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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 subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

(Effective January 1, 2014)

Stayed Suspension

(Do not write above this line.)

**No Prior Record of Discipline;
Pretrial Stipulation;
Good Character;
Pro Bono/Community Activities**

(See, attachment pages 8-9.)

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 1.2(c)(1), 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, 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: **Respondent successfully completed Ethics School on December 5, 2013.**
- (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 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Other Conditions:**
- No Client Trust Accounting School recommended. Respondent successfully completed Client Trust Accounting School on December 6, 2013.**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAVID CURTIS HOLLINGSWORTH

CASE NUMBER: 12-O-10185-PEM

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 12-O-10185 (Complainant: Connie Gatewood)

Facts.

1. On July 19, 2007, Respondent was hired by Connie Gatewood ("Gatewood") to represent her in a matter styled, *Marriage of Lovelace*, Fresno County Superior Court Case No. 08CEFL01320.
2. From April 25, 2011 through July 21, 2011, Respondent received two checks totaling \$1,900, which represented funds Respondent received on behalf of Gatewood in the *Lovelace* matter. Instead of depositing the \$1,900 into a client trust account, Respondent deposited the funds into his general operating account.
3. In October 2011, the State Bar opened an investigation in case number 12-O-10185 after receiving a complaint against Respondent from Gatewood. On September 19, 2012, Respondent entered an Agreement in Lieu of Discipline ("ALD") with the State Bar to resolve case number 12-O-10185. As part of the ALD, Respondent was required to:
 - A. Timely submit three (3) quarterly reports by the due dates of January 10, 2013, April 10, 2013 and July 10, 2013;
 - B. Submit the final report by September 19, 2013;
 - C. Attend Ethics School by September 19, 2013; and
 - D. Attend Client Trust Accounting School by September 19, 2013.
4. Thereafter, Respondent failed to comply with the conditions attached to the ALD, as follows:
 - A. Respondent failed to timely submit three (3) quarterly reports by January 10, 2013, April 10, 2013 and July 10, 2013;
 - B. Respondent failed to submit the final report by September 19, 2013;
 - C. Respondent failed to attend Ethics School by September 19, 2013; and

D. Respondent failed to attend Client Trust Accounting School by September 19, 2013.

5. Respondent has since complied with the conditions attached to the ALD.

Conclusions of Law.

6. By failing to deposit two checks totaling \$1,900 received on behalf of Gatewood into a client trust account, Respondent failed to deposit funds received for the benefit of the client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in wilful violation Rules of Professional Conduct, rule 4-100(A).
7. By failing to timely submit (3) quarterly reports by January 10, 2013, April 10, 2013 and July 10, 2013, by failing to submit the final report by September 19, 2013, by failing to attend Ethics School by September 19, 2013 and by failing to attend Client Trust Accounting School by September 19, 2013, Respondent failed to comply with the conditions attached to an Agreement in Lieu of Discipline in willful violation of Business and Professions Code section 6068(l).

ADDITIONAL FACTS RE: AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.2(b) (ii)): Respondent's failure to deposit client funds in trust and failure to comply with conditions of an ALD represent multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: Although Respondent's misconduct is serious, he has no prior record of discipline in approximately 11.5 years of practice prior to the first act of misconduct at issue herein and is entitled to mitigation. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 2013); *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13.)

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of the Chief Trial Counsel prior to trial, thereby saving the State Bar Court time and resources. (*Silva-Zidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

Good Character: Respondent's good character is attested to by several references in the general community consisting of three (3) former clients, three (3) long term employees and one (1) reference from the local legal community, all of whom are aware of the full extent of Respondent's misconduct. Respondent's six character references state uniformly that the misconduct at issue was highly aberrational for Respondent. They know him to be honest and hardworking and to take cases that other attorneys would not, thus providing important access to the legal system for those who may not otherwise be able to obtain it.

Pro Bono: Respondent performed pro bono work and community activities over many years, particularly involving the homeless and the deaf communities in the greater Fresno area. Specifically, Respondent works with the Deaf and Heard-of-Hearing Service Center, where he gives free lectures and provides free legal services. He also served as a nominal-fee arbitrator for the Better Business Bureau. Respondent has volunteered as a Judge Pro Tem on several occasions. He has volunteered as a mediator

for family law matters, again free of charge. He has also provided, and continues to provide, free legal services and consultation for the homeless to assist them in obtaining government financial assistance, substance abuse and mental health referrals and permanent housing qualification. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359 [“Civic service can deserve recognition as a mitigating circumstance under this standard.”].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, Respondent admits to committing more than one act of professional misconduct. Standard 1.7(a) requires that where a Respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

The more severe sanction applicable to Respondent’s misconduct is found in standard 2.2, which applies to Respondent’s failure to deposit client funds in trust and provides that “suspension or reproof is appropriate for any other violation of Rule 4-100” [which does not include misappropriation, commingling or failing to promptly pay out entrusted funds].

In this matter, Respondent failed to deposit two checks totaling \$1,900 in client funds into his client trust account. He then violated six (6) conditions of his ALD. Respondent’s misconduct is serious. However, Respondent has since come into compliance with the conditions of the ALD, which demonstrates that he can comply with ethical responsibilities.

In aggravation, Respondent committed multiple acts of misconduct. Respondent is entitled to mitigation

for 11.5 years of practice without discipline and for entering into this stipulation. Respondent is also entitled to mitigation for good character pro bono/community activities.

On balance, discipline at the mid-range recommended by the standards is appropriate. A one-year stayed suspension with probation conditions for two (2) years will serve the purpose of attorney discipline.

Case law is also instructive. In *Conroy v. State Bar* (1990) 51 Cal.3d 799, an attorney had received a private reproof with a condition that he take the PRE within one year. The attorney inexplicably failed to take the PRE within the year, although he did ultimately take it outside the due date. In upholding the recommendation of discipline including 60 days' actual suspension, the Supreme Court noted the several serious aggravating circumstances surrounding this misconduct, including the attorney's prior record of discipline, his failure to participate in the subsequent proceedings and his failure to appreciate the gravity of his earlier misdeeds.

The misconduct in the instant case, while serious, is less serious than that considered by the Supreme Court in *Conroy* because of the differences in the levels of aggravation and mitigation. The attorney in *Conroy* had significant aggravation with virtually no mitigation. In the instant matter, Respondent has participated in these proceedings, has no prior record of discipline and has provided evidence of good character and pro bono/community activities.

COSTS OF DISCIPLINARY PROCEEDINGS.

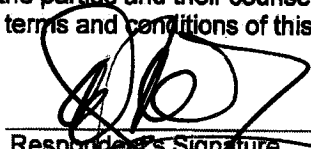
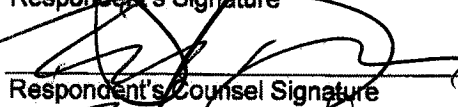
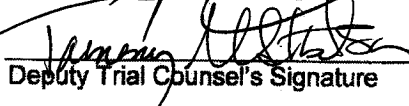
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of April 25, 2014, the prosecution costs in this matter are \$6,944.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

| | |
|--|--|
| In the Matter of: DAVID CURTIS HOLLINGSWORTH | Case number(s): 12-O-10185-PEM |
|--|--|

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>7/1/14</u> Date |  Respondent's Signature | <u>David Curtis Hollingsworth</u> Print Name |
| <u>7/1/14</u> Date |  Respondent's Counsel Signature | <u>Thornton L. Davidson</u> Print Name |
| <u>7/7/14</u> Date |  Deputy Trial Counsel's Signature | <u>Tammy M. Albertsen</u> Print Name |

(Do not write above this line.)

In the Matter of:
DAVID CURTIS HOLLINGSWORTH

Case Number(s):
12-O-10185-PEM

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.

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

JULY 15 2014


LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on July 11, 2014, 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:

THORNTON L. DAVIDSON
THE ERISA LAW GROUP, LLP
6485 N PALM AVE STE 105
FRESNO, CA 93704

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:

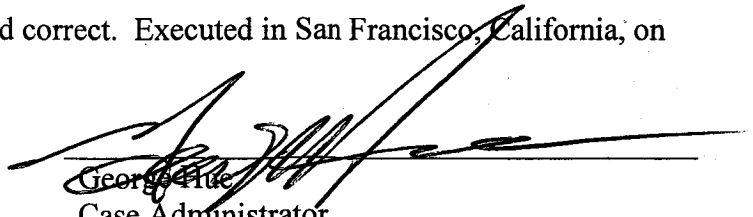
by fax transmission, at fax number . No error was reported by the fax machine that I used.

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:

Tammy M. Albertsen, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 11, 2014.


George H. ...
Case Administrator
State Bar Court