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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Timothy G. Byer Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1325 Bar # 172472	Case Number(s): 12-O-10812 12-O-13363	For Court use only <div style="text-align: center;"> FILED DEC 10 2012  STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Counsel For Respondent David C. Carr 530 B Street, Ste. 1410 San Diego, CA 92101-4410 (619) 696-0526 Bar #	<div style="font-size: 2em; font-weight: bold;">PUBLIC MATTER</div>	
In the Matter of: Jon James McGrath Bar # 237893 A Member of the State Bar of California (Respondent)	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <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 October 27, 2005.
- (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):
 - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (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
 - (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. See Attachment, page , "Aggravating Circumstances"
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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 , "Aggravating Circumstances"
- (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.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

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- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

See Attachment, page : "Mitigating Circumstances"

D. Discipline:

- (1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of 1 year.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.

- (2) **Probation:**

Respondent must be placed on probation for a period of 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)

- (3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of 30 days.
- 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 the 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

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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 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 5.162(A) & (E), Rules of Procedure.**

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- 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.
- (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:
- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JON JAMES MCGRATH

CASE NUMBERS: 12-O-10812, 12-O-13363

FACTS AND CONCLUSIONS OF LAW:

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

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 July 31, 2012 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 the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

CASE NUMBER: 12-O-10812

FACTS:

1. On March 24, 2011, Bud Faulkner employed Respondent to negotiate and obtain for him a home mortgage loan modification. On April 8, 2011, Faulkner paid Respondent an initial advanced fee of \$1,200. On that date, Respondent had not completed all the contacted-for services described in the engagement agreement with Faulkner.
2. On May 9, 2011, Faulkner paid Respondent a second installment toward his advanced fee, in the sum of \$595. On that date, Respondent had still not completed all the contacted-for services described in the engagement agreement with Faulkner.

CONCLUSIONS OF LAW:

3. By charging and receiving advanced fees after October 11, 2009 in exchange for agreeing to perform loan modification services in violation of California Civil Code section 2944.7(a)(1), Respondent willfully violated Business and Professions Code section 6106.3.
4. On November 19, 2012, Respondent repaid Faulkner in full.

CASE NUMBER: 12-O-13363

FACTS:

5. On August 23, 2011, Charles Johnston employed Respondent to negotiate and obtain for

him a home mortgage loan modification, and paid Respondent compensation in the sum of \$595. On that date, Respondent had not completed all the contacted-for services described in the engagement agreement with Johnston.

6. Also on August 23, 2011, pursuant to the fee agreement, Respondent charged Johnston for a second and third installment toward his advanced fee, each, respectively, in the sum of \$1,450. On that date, Respondent had still not completed all the contacted-for services described in the engagement agreement with Johnston.

7. On November 29, 2011, Respondent sent correspondence to Johnston in which Respondent asserted:

- a. That Respondent's collection of \$595.00 in compensation on or about August 23, 2011 was not done in violation of Business and Professions Code section 6106.3;
- b. That "the State Bar, including the State Bar expert, has found that [Respondent's] fee agreement is acceptable[;]"
- c. And that "the California State Bar expert for the loan modification industry endorses [Respondent's firm] as the most professional, effective, and ethical loan modification firm within the state of California."

8. All of the assertions in the preceding paragraph were false and Respondent either knew, or was grossly negligent in not knowing, of their falsity.

9. On November 19, 2012, Respondent repaid Johnson in full.

CONCLUSIONS OF LAW:

10. By charging and receiving advanced fees after October 11, 2009 in exchange for agreeing to perform loan modification services in violation of California Civil Code section 2944.7(a)(1), Respondent willfully violated Business and Professions Code section 6106.3.

11. By making the assertions in his November 29, 2011 correspondence which he either knew, or was grossly negligent in not knowing, were false, Respondent committed an act or acts involving moral turpitude, dishonesty or corruption.

AGGRAVATING CIRCUMSTANCES.

Harm (Standard 1.2(b)(iv)): Both of Respondent's matters involved representation of individuals seeking modifications of their home mortgage loans due to difficult economic circumstances, who were harmed when Respondent's receipt from them of illegal fees further exacerbated their difficult economic circumstances.

Multiple/Pattern of Misconduct (Standard 1.2(b)(ii)): Respondent's three violations of law constitute a multiplicity of misconduct.

MITIGATING CIRCUMSTANCES.

Respondent stipulated to facts, conclusions of law, and disposition in order to resolve his disciplinary proceedings as efficiently as possible. (See *Silva-Vador v. State Bar* (1989) 49 Cal.3d 1071, 1079,

where mitigative credit was accorded to the attorney for admitting facts and culpability in order to simplify the disciplinary proceedings against her.)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a “process of fixing discipline” pursuant to a set of written principles to “better discharge the purposes of attorney discipline as announced by the Supreme Court.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.” (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

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.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Standard 1.6(a) provides, in relevant part, that “if two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable standards.”

Respondent’s violations of Business and Professions Code section 6106.3 are not addressed in a particular standard, and therefore fall within the ambit of Standard 2.10, which calls for a range of discipline from reproof to suspension. As such Standard 2.3, applicable to Respondent’s misrepresentations, is the more severe of the sanctions applicable here. That standard provides that “culpability of a member of an act of moral turpitude... shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member’s acts within the practice of law.” In the Johnston matter, the client was not harmed or misled by Respondent’s misrepresentations, and the magnitude of the misrepresentations in the letter was not great despite being made to a client and within his practice of law. Application of standard 2.3 indicates actual suspension is appropriate.

Consideration should also be given to the aggravating and mitigating factors. In aggravation, Respondent harmed his clients by taking an illegal fee from them, which he has now paid back, and his three violations are multiple acts of misconduct. In mitigation he has entered into this stipulation admitting all violations and that his actual suspension and conditions of probation are warranted, eliminating the need for further inconveniencing his clients to appear as witnesses or the necessity of trial.

In *Drociak v. State Bar*, 52 Cal.3d. 1085 (1991), the Supreme Court upheld a disciplinary Review Department recommendation of one year stayed suspension and two years probation, with probation

conditions including thirty days actual suspension where it was shown an attorney who had obtained his client's presigned verifications to discovery responses had committed an act of moral turpitude. His misconduct was aggravated by a finding of a pattern of misconduct (based on his admission to employing the presigned verification practice with other clients), a threat to the administration of justice, and a lack of remorse. Significantly, his misconduct was mitigated by the lack of harm to his clients, his cooperation with the State Bar, and his 25 prior years of discipline-free practice.

Here, Respondent's misconduct is lacking both the extensive aggravation and mitigation presented by the facts in *Drociak*. *Drociak* was in practice for 25 years without discipline, mitigation not present here where Respondent had been in practice less than 6 prior to the commencement of his misconduct. *Drociak's* misconduct constituted a pattern, a threat to the administration of justice, and lacked remorse, none of which are aggravating factors here. Respondent's misrepresentations did not harm his client: although that client had been harmed by the payment of an illegal fee at the outset of the representation, Respondent's misrepresentation as to the permissibility of his advanced fee did not induce reliance by that client to his detriment. What adds to Respondent's misconduct here are his violations of the loan modification laws prohibiting his taking of a fee in advance of performing those services. This raises Respondent's misconduct here to the level of that in *Drociak*.

A period of thirty days actual suspension is within the range of discipline prescribed by Standard 2.3 and caselaw; and will serve the purposes of discipline under the circumstances of this case.

EXCLUSION FROM MCLE CREDIT.

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School and State Bar Client Trust Accounting School, which have been ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was November 20, 2012.

COSTS OF DISCIPLINARY PROCEEDINGS.


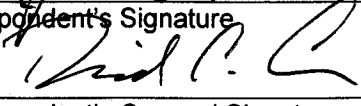
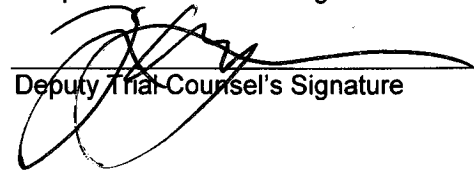
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of November 20, 2012, the prosecution costs in this matter are approximately \$7,671. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: JON JAMES MCGRATH	Case number(s): 12-O-10812, 12-O-13363
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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.

November 20, 2012 Date	 Respondent's Signature	Jon J. McGrath Print Name
November 20, 2012 Date	 Respondent's Counsel Signature	David C. Carr Print Name
November 20, 2012 Date	 Deputy Trial Counsel's Signature	Timothy G. Byer Print Name

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In the Matter of:
JON JAMES MCGRATH

Case Number(s):
12-O-10812, 12-O-13363

ACTUAL 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 8 - PARAGRAPH 11 - INSERT AT END OF SENTENCE -

" IN VIOLATION OF BUSINESS AND PROFESSIONAL CODE SECTION 6106."

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.)**

12-05-2012
Date


RICHARD A. PLATEL
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 Los Angeles, on December 10, 2012, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

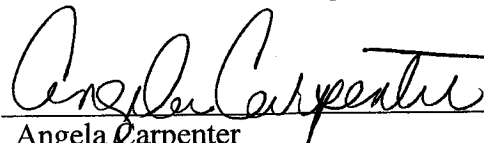
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID C. CARR
LAW OFFICE OF DAVID C. CARR
530 B STREET STE. 1410
SAN DIEGO, CA 92101

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

TIMOTHY BYER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 10, 2012.



Angela Carpenter
Case Administrator
State Bar Court