

**PUBLIC MATTER
FILED**

MAY 14 2018

**STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO**

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	Case Nos. 14-O-05994 (15-O-13632;
	)	15-O-14657; 15-O-15176; 15-O-15227;
ANDREW MARK WEITZ,	)	16-O-10268); 15-O-10711 (15-O-11814;
	)	15-O-12041; 15-O-12774; 15-O-12808;
A Member of the State Bar, No. 129962.	)	15-O-12845; 15-O-13385; 15-O-13514;
	)	15-O-13631; 15-O-13735); 16-C-11032;
	)	17-O-05343 (Cons.)-LMA
)	
	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT

In this matter, respondent Andrew Mark Weitz (Respondent) was charged with misconduct stemming from four consolidated matters. Respondent failed to appear at trial and his default was entered. The Office of Chief Trial Counsel of the State Bar of California (OCTC) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated within 45 days, the OCTC will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 14, 1987, and has been a member since then.

Procedural Requirements Have Been Satisfied

On February 8, 2016, Respondent pleaded nolo contendere to a misdemeanor violation of Government Code section 6201 (stealing and removing a paper or proceeding of the court). On May 16, 2016, the OCTC transmitted evidence of finality of Respondent's conviction to the Review Department. On June 2, 2016, the Review Department referred the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline. On June 6, 2016, the State Bar Court filed and properly served a Notice of Hearing on Conviction on Respondent by certified mail, return receipt requested, at his membership records address. The Notice of Hearing on Conviction notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.345.)

On February 23, 2016, the OCTC filed and properly served a notice of disciplinary charges (NDC #1), in case Nos. 15-O-10711 (15-O-11814; 15-O-12041; 15-O-12774; 15-O-12808; 15-O-12845; 15-O-13385; 15-O-13514; 15-O-13631; 15-O-13735), on Respondent's attorney, Russell James Thomulka (Thomulka), at his membership records address by certified mail, return receipt requested. The NDC also notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.)

On March 9, 2016, Respondent, by and through Thomulka, filed a response to NDC #1. On June 23, 2016, Respondent, by and through Thomulka, filed a response to the Notice of Hearing on Conviction.

On July 12, 2016, the OCTC filed and properly served a notice of disciplinary charges (NDC #2), in case Nos. 14-O-05994 (15-O-13632; 15-O-14657; 15-O-15176; 15-O-15227; 16-O-10268), on Thomulka, at his membership records address by certified mail, return receipt requested. The NDC also notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation.

On July 22, 2016, Respondent, by and through Thomulka, filed a response to NDC #2.

On January 16, 2018, the OCTC filed and properly served a notice of disciplinary charges (NDC #3), in case No. 17-O-05343, on Thomulka, at his membership records address by certified mail, return receipt requested. The NDC also notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. Respondent did not file a response to NDC #3.

All of these matters were ultimately consolidated. Since NDC #3 was filed so close in time to the existing trial dates, the court advised the parties that the portion of the trial involving NDC #3 would trail the other matters to ensure the parties received adequate time to engage in discovery and otherwise prepare for trial.

Respondent participated in these proceedings until the first day of trial, February 6, 2018. On that date, Respondent and Thomulka came to the State Bar Court, but elected to leave before the court called Respondent's matter. Finding that all of the requirements of rule 5.81(A) were satisfied, the court issued and properly served an order entering Respondent's default that same day. The order notified Respondent that if he did not timely move to set aside or vacate his default, the court would recommend his disbarment. The order also placed Respondent on

involuntary inactive status under Business and Professions Code section 6007, subdivision (e), and he has remained inactive since that time.

Two days later, on February 8, 2016, the OCTC filed and properly served a statement reciting the facts and circumstances surrounding Respondent's conviction matter warranting the imposition of discipline. This statement was filed pursuant to rule 5.346(C)(2).

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].) On March 15, 2017, the OCTC filed the petition for disbarment. As required by rule 5.85(A), the OCTC reported in the petition that: (1) it has had no contact with Respondent since his default was entered; (2) Respondent has other disciplinary matters pending; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has made payments resulting from Respondent's misconduct.³ Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on April 24, 2018.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations in the NDCs and as set forth in Respondent's conviction matter are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in Respondent's conviction and the NDCs support the conclusion that Respondent is culpable as charged, except as otherwise noted, and violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case Number 16-C-11032

On June 23, 2015, Respondent was present in the Los Angeles County Superior Court on behalf of a prospective criminal client. Prior to formally being substituted into the case on behalf

³ As of March 31, 2018, Respondent owed the Client Security Fund over \$72,500.

of the prospective client, Respondent obtained the prospective client's court case file and discovery from the public defender. Respondent was aware that the court case file was for use in the courtroom only and not to be removed from the courtroom.

After speaking with the assigned Deputy City Attorney on the case, Respondent attempted to leave the courtroom with the court case file. The courtroom bailiff blocked the door and asked Respondent if he had the court case file with him. The bailiff observed that Respondent had the court case file underneath a note pad and asked Respondent for the file.

Respondent refused to hand over the court case file by loudly replying, "I am not giving you the fucking file." Respondent exited the courtroom and resisted the bailiff's attempts to retrieve the file. The bailiff then forcibly detained and handcuffed Respondent.

Based on this conduct, Respondent, on February 8, 2016, pleaded nolo contendere to and was convicted on a misdemeanor violation of Government Code section 6201 (stealing and removing a paper or proceeding of court). The court finds that the facts and circumstances surrounding this conviction do not involve moral turpitude, but do constitute other misconduct warranting discipline.

**NDC #1–Case Nos.: 15-O-10711 (15-O-11814; 15-O-12041; 15-O-12774;
15-O-12808; 15-O-12845; 15-O-13385; 15-O-13514; 15-O-13631;
15-O-13735)**

Count One – Respondent willfully violated Business and Professions Code section 6106.3 (violation of Civil Code section 2944.7) by charging advanced fees prior to completing all services in a loan modification matter for client Frank Moore.

Count Two – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by repeatedly telling the OCTC that he had no knowledge of client Frank Moore when he knew or was grossly negligent in not knowing the statements were false.

Count Three – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by providing his client with a falsified itemized accounting when Respondent knew or was grossly negligent in not knowing the itemized accounting was false.

Count Four – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by providing an arbitrator with a falsified itemized accounting when Respondent knew or was grossly negligent in not knowing the itemized accounting was false.

Count Five – Respondent willfully violated Business and Professions Code section 6106.3 (violation of Civil Code section 2944.7) by charging advanced fees prior to completing all services in a loan modification matter for client Jackie Nutting.

Count Six – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by falsely advising his client that Respondent’s firm had submitted documents to the client’s lender and had been actively negotiating with the lender when Respondent knew or was grossly negligent in not knowing those statements were false.

Count Seven – Respondent willfully violated Business and Professions Code section 6106.3 (violation of Civil Code section 2944.7) by charging advanced fees prior to completing all services in a loan modification matter for client Cristina Ledesma-Jonathan.

Count Eight – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by allowing documents falsely containing his client’s simulated signature to be submitted to the client’s lender in support of a loan modification application.

Count Nine – Respondent willfully violated Business and Professions Code section 6106.3 (violation of Civil Code section 2944.7) by charging advanced fees prior to completing all services in a loan modification matter for client Ivan Ochoa.

Count Ten – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to perform the services for which he was employed, i.e., negotiating a mortgage loan modification or other form of mortgage loan forbearance.

Count Eleven – Respondent willfully violated Business and Professions Code section 6106.3 (violation of Civil Code section 2944.7) by charging advanced fees prior to completing all services in a loan modification matter for client LuAnne Montilla.

Count Twelve – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by allowing false documents purporting to contain his client’s simulated signature to be submitted to the client’s lender in support of a loan modification application.

Count Thirteen – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to deposit client funds in trust) by failing to deposit funds received for the benefit of a client into a trust account.

Count Fourteen – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating client funds in the amount of \$9,750.

Count Fifteen – Respondent willfully violated Business and Professions Code section 6106.3 (violation of Civil Code section 2944.7) by charging advanced fees prior to completing all services in a loan modification matter for client Jennifer Segura.

Count Sixteen – Respondent willfully violated Business and Professions Code section 6106.3 (violation of Civil Code section 2944.7) by charging advanced fees prior to completing all services in a loan modification matter for client Ruben Orozco.

Count Seventeen – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to perform

the services for which he was employed, i.e., negotiating a mortgage loan modification or other form of mortgage loan forbearance.

Count Eighteen – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by allowing false documents purporting to contain his former client’s simulated signature to be submitted to the former client’s lender in support of a loan modification application.

Count Nineteen – Respondent willfully violated Business and Professions Code section 6106.3 (violation of Civil Code section 2944.7) by charging advanced fees prior to completing all services in a loan modification matter for client Michael Perez.

Count Twenty – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failing to release file) by failing to promptly turn over his client’s papers and property upon his client’s request following termination of employment.

Count Twenty-One – Respondent willfully violated Business and Professions Code section 6106.3 (violation of Civil Code section 2944.7) by charging advanced fees prior to completing all services in a loan modification matter for client Gerolyn Howard.

Count Twenty-Two – Respondent willfully violated Business and Professions Code section 6106.3 (violation of Civil Code section 2944.7) by charging advanced fees prior to completing all services in a loan modification matter for client Carolyn Watts.

Count Twenty-Three – Respondent willfully violated rule 1-300(A) of the Rules of Professional Conduct (aiding the unauthorized practice of law) by giving his non-attorney office staff unfettered access and control in managing and operating his law office without adequate supervision and by turning over his attorney responsibilities to his staff.

Count Twenty-Four –the court does not find Respondent culpable of willfully violating rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with

competence – failure to supervise) as there is not clear and convincing evidence that Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in the ten listed matters. The allegations in Count Twenty-Four are more akin to aiding the unauthorized practice of law, which was already alleged and found in Count Twenty-Three.

Count Twenty-Five – Respondent willfully violated Business and Professions Code section 6105 (permitting misuse of name) by lending his name to be used as attorney by his non-attorney office staff.

Count Twenty-Six – the court does not find Respondent culpable of willfully violating rule 4-200(A) of the Rules of Professional Conduct (unconscionable fee). It has already been alleged and found that Respondent’s fees violated Civil Code section 2944.7; however, there is not clear and convincing evidence that his fees were also unconscionable at the time the agreements were entered into.

Count Twenty-Seven – Respondent willfully violated rule 1-310 of the Rules of Professional Conduct (forming a partnership with a non-lawyer) by forming a partnership with a non-lawyer where at least one of the activities of the partnership consisted of the practice of law.

Count Twenty-Eight – Respondent willfully violated rule 1-320(A) of the Rules of Professional Conduct (sharing fees with a non-lawyer) by willfully sharing legal fees with persons who were not lawyers.

Count Twenty-Nine – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – habitual disregard of client matters), by habitually disregarding the interests of his clients, including turning over his attorney responsibilities to his non-attorney staff and allowing them to perform legal services independently and without Respondent’s supervision.

**NDC #2–Case Nos.: 14-O-05994 (15-O-13632; 15-O-14657; 15-O-15176;
15-O-15227; 16-O-10268)**

Count One – Respondent willfully violated Business and Professions Code section 6106.3 (violation of Civil Code section 2944.7) by charging advanced fees prior to completing all services in a loan modification matter for clients Shone Harris and Danniell Howard.

Count Two – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by allowing false documents purporting to contain his clients' simulated signatures to be submitted to the clients' lender in support of a loan modification application.

Count Three – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by providing his client with a purported refund check and misrepresenting the legitimacy of the check when Respondent knew or was grossly negligent in not knowing the refund check was written against insufficient funds.

Count Four – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by providing the OCTC with a false client accounting and making false representations to the OCTC when he knew or was grossly negligent in not knowing the accounting and statements were false.

Count Five – Respondent willfully violated Business and Professions Code section 6106.3 (violation of Civil Code section 2944.7) by charging advanced fees prior to completing all services in a loan modification matter for client Mazie Buckley.

Count Six – Respondent willfully violated Business and Professions Code section 6106.3 (violation of Civil Code section 2944.7) by charging advanced fees prior to completing all services in a loan modification matter for client Waynetta Williams.

Count Seven – Respondent willfully violated Business and Professions Code section 6106.3 (violation of Civil Code section 2944.7) by charging advanced fees prior to completing all services in a loan modification matter for client Jose Alcaraz.

Count Eight – Respondent willfully violated Business and Professions Code section 6106.3 (violation of Civil Code section 2944.7) by charging advanced fees prior to completing all services in a loan modification matter for clients Alfonzo and Nadine Washington.

Count Nine – Respondent willfully violated Business and Professions Code section 6106.3 (violation of Civil Code section 2944.7) by charging advanced fees prior to completing all services in a loan modification matter for clients David and Kathryn Korengold.

Count Ten – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by allowing false documents purporting to contain his client's simulated signature to be submitted to the client's lender in support of a loan modification application.

Count Eleven – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (commingling) by using his trust account to pay personal expenses.

Count Twelve – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (commingling) by depositing or commingling personal funds into his trust account.

Count Thirteen – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by providing the OCTC investigator with falsified documents when he knew or was grossly negligent in not knowing the documents were false.

Count Fourteen – Respondent willfully violated rule 1-300(A) of the Rules of Professional Conduct (aiding the unauthorized practice of law) by giving his non-attorney office staff unfettered access and control in managing and operating his law office without adequate supervision and by turning over his attorney responsibilities to his staff.

Count Fifteen –the court does not find Respondent culpable of willfully violating rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence – failure to supervise) as there is not clear and convincing evidence that Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in the six listed matters. The allegations in Count Fifteen are more akin to aiding the unauthorized practice of law, which was already alleged and found in Count Fourteen of NDC #2.

Count Sixteen – Respondent willfully violated Business and Professions Code section 6105 (permitting misuse of name) by lending his name to be used as attorney by his non-attorney office staff.

Count Seventeen – the court does not find Respondent culpable of willfully violating rule 4-200(A) of the Rules of Professional Conduct (unconscionable fee). It has already been alleged and found that Respondent’s fees violated Civil Code section 2944.7; however, there is not clear and convincing evidence that his fees were also unconscionable at the time the agreements were entered into.

Count Eighteen – Respondent willfully violated rule 1-310 of the Rules of Professional Conduct (forming a partnership with a non-lawyer) by forming a partnership with a non-lawyer where at least one of the activities of the partnership consisted of the practice of law.

Count Nineteen – Respondent willfully violated rule 1-320(A) of the Rules of Professional Conduct (sharing fees with a non-lawyer) by willfully sharing legal fees with persons who were not lawyers.

Count Twenty – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – habitual disregard of client matters), by habitually disregarding the interests of his clients, including turning over his attorney responsibilities to his non-attorney

staff and allowing them to perform legal services independently and without Respondent's supervision.

NDC #3–Case No.: 17-O-05343

Count One – Respondent willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws – unauthorized practice) by holding himself out as entitled to practice law and actually practicing law when he was not an active member of the State Bar, in willful violation of Business and Professions Code sections 6125 and 6126.

Count Two – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by holding himself out as entitled to practice law and actually practicing law when he was not an active member of the State Bar.

Count Three – Respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by charging \$4,360 for legal work performed while he was not entitled to practice law in this state.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied, and Respondent's disbarment is recommended. In particular:

- (1) the NDCs and Notice of Hearing on Conviction were properly served on Respondent under rule 5.25;
- (2) Respondent had actual notice of the proceedings prior to the entry of his default;
- (3) the default was properly entered under rule 5.81; and
- (4) the factual allegations in the NDCs and Respondent's conviction deemed admitted by the entry of default support a finding that Respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, Respondent failed to appear for the trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Andrew Mark Weitz be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that Respondent be ordered to make restitution to the following payees:

- (1) Frank Moore in the amount of \$14,700 plus 10 percent interest per year from March 7, 2014;
- (2) Jackie Nutting in the amount of \$14,750 plus 10 percent interest per year from December 13, 2014;
- (3) Cristina Ledesma-Jonathan in the amount of \$8,900 plus 10 percent interest per year from March 3, 2015;
- (4) Ivan Ochoa in the amount of \$18,000 plus 10 percent interest per year from February 26, 2015;
- (5) LuAnne Montilla in the amount of \$15,000 plus 10 percent interest per year from April 28, 2014;
- (6) LuAnne Montilla in the amount of \$9,750 plus 10 percent interest per year from July 3, 2014;
- (7) Jennifer Segura in the amount of \$14,700 plus 10 percent interest per year from September 13, 2013;
- (8) Ruben Orozco in the amount of \$15,000 plus 10 percent interest per year from January 21, 2014;
- (9) Michael Perez in the amount of \$18,500 plus 10 percent interest per year from February 1, 2015;

- (10) Gerolyn Howard in the amount of \$14,000 plus 10 percent interest per year from August 1, 2014;
- (11) Carolyn Watts in the amount of \$13,000 plus 10 percent interest per year from May 23, 2014;
- (12) Shone Harris and Danniell Howard in the amount of \$12,000 plus 10 percent interest per year from January 30, 2014;
- (13) Mazie Buckley in the amount of \$14,700 plus 10 percent interest per year from June 10, 2014;
- (14) Waynetta Williams in the amount of \$14,700 plus 10 percent interest per year from June 30, 2014;
- (15) Jose Alcaraz in the amount of \$6,500 plus 10 percent interest per year from July 1, 2015;
- (16) Alfonzo and Nadine Washington in the amount of \$14,700 plus 10 percent interest per year from October 24, 2014;
- (17) David and Kathryn Korengold in the amount of \$14,000 plus 10 percent interest per year from July 2, 2014; and
- (18) Nick Gritsonis in the amount of \$4,360 plus 10 percent interest per year from September 30, 2017.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

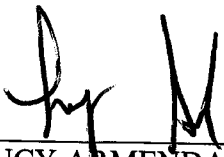
Costs

The court further recommends that costs be awarded to the OCTC in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Andrew Mark Weitz, State Bar number 129962, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: May 14, 2018



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 Court Specialist 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 May 14, 2018, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

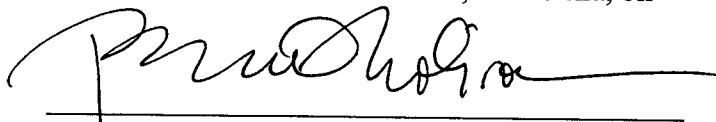
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ANDREW M. WEITZ
4551 COLDWATER CANYON AVE
NO. 204
STUDIO CITY, CA 91604

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

ERIC J. AUFDENGARTEN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 14, 2018.



Bernadette Molina
Court Specialist
State Bar Court