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State Bar Court of California Hearing Department Los Angeles REPROVAL			PUBLIC MATTER
<p>Counsel For The State Bar</p> <p>William Todd Senior Trial Counsel 845 S. Figueroa Street Los Angeles, California 90017 213-765-1491</p> <p>Bar # 259194</p>	<p>Case Number(s): 15-O-12440</p>	<p>For Court use only</p> <div style="text-align: center; padding: 20px;"> <p>FILED</p> <p>JAN 07 2016</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> </div>	
<p>Counsel For Respondent</p> <p>Paul Virgo 9909 Topanga Blvd #282 Chatsworth, California 91311 310-666-9701</p> <p>Bar # 67900</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>		
<p>In the Matter of: DANIEL BOCIC MARTINEZ</p> <p>Bar # 265547</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.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 1, 2009**.
- (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."

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- (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 (public reproof).
- Case ineligible for costs (private reproof).
- Costs are to be paid in equal amounts prior to February 1 for the following membership years: **the two membership years following the reproof order in this matter.** (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.

(9) The parties understand that:

- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 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

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- (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline".
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.
- (7) **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.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. Please see "Attachment to Stipulation," at page eight.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.

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- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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. **Please see "Attachment to Stipulation," at page eight.**
- (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:

Please see "No Prior Discipline" in "Attachment to Stipulation," at page eight.

Please see "Prefiling Stipulation" in "Attachment to Stipulation," at page eight.

D. Discipline:

- (1) **Private reproof (check applicable conditions, if any, below)**
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).
- or
- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) Respondent must comply with the conditions attached to the reproof for a period of **one year**.
- (2) During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reproof.
- (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) 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 of the effective date of the reproof.

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No MPRE recommended. Reason:

(11) The following conditions are attached hereto and incorporated:

Substance Abuse Conditions

Law Office Management Conditions

Medical Conditions

Financial Conditions

F. Other Conditions Negotiated by the Parties:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DANIEL BOCIC MARTINEZ

CASE NUMBER: 15-O-12440

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. 15-O-12440 (Complainant: Michelle Staael-O'Rourke)

FACTS:

1. Michelle Staael-O'Rourke employed Respondent in September 2013 to dissolve her marriage. Staael-O'Rourke's parents used their own money to pay Respondent an advance fee of \$3,500 in the form of two \$1,750 cashier's checks. Respondent did not obtain Staael-O'Rourke's informed written consent from Staael-O'Rourke before Respondent accepted compensation from Staael-O'Rourke's parents.
2. Respondent filed Staael-O'Rourke's dissolution petition on September 23, 2013. In June 2014, Staael-O'Rourke signed a document entitled "Request to Enter Default" for her dissolution case.
3. In the months following the day Staael-O'Rourke signed the default request, Staael-O'Rourke made multiple attempts to reach Respondent by phone, but succeeded only in speaking with Respondent's staff. By November 2014, Staael-O'Rourke discovered that Respondent's Pomona office phone no longer worked, and Staael-O'Rourke found it difficult to contact Respondent at his Costa Mesa office location as well. Instead, calls Staael-O'Rourke made to Respondent usually resulted in return text messages promising a later callback, but the callback would come from an assistant who would then advise Staael-O'Rourke that Respondent would follow through with the necessary filings in her case. However, because Respondent did not file the default request Staael-O'Rourke signed in June 2014 by March 20, 2015, and because Staael-O'Rourke could not communicate with Respondent, Staael-O'Rourke made a State Bar complaint on that date.
4. On May 11, 2015, after Respondent learned of Staael-O'Rourke's State Bar complaint, Respondent contacted Staael-O'Rourke and entered into a written agreement with Staael-O'Rourke in which Respondent agreed to continue as her counsel, to file the required documents, and to keep her informed of all developments. In return, Staael-O'Rourke agreed to withdraw her State Bar complaint. On May 13, 2015, Respondent filed the Request for Default that Staael-O'Rourke signed in June 2014, and by October 2015, the court finalized Staael-O'Rourke's marital dissolution.

CONCLUSIONS OF LAW:

5. By failing to file the request for entry of default in the client's marital dissolution matter for nearly eleven months, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

6. By accepting \$3,500 from client Staael-O'Rourke's parents without obtaining Staael-O'Rourke's informed written consent to receive such compensation, Respondent accepted fees from a third-party on a client's behalf without written permission from the client in willful violation of Rules of Professional Conduct, rule 3-310(F).

7. By failing to respond promptly to the Staael-O'Rourke's inquiries between June 2014 and March 2015, Respondent failed to communicate with a client in a matter in which Respondent previously agreed to provide legal services in willful violation of Business and Professions Code, section 6068(m).

8. By entering into an agreement with client Staael-O'Rourke in which Staael-O'Rourke agreed to withdraw her pending State Bar complaint, Respondent entered into an agreement with a client in which the client agreed to withdraw a pending State Bar complaint in willful violation of Business and Professions Code, section 6090.5(a)(2).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std 1.5(b)). Respondent engaged in multiple acts of misconduct in a single client matter.

MITIGATING CIRCUMSTANCES.

No prior discipline: Respondent lacks any prior record of discipline, though because his misconduct began less than five years after the State Bar admitted him, the mitigating weight of the absence of a prior record of discipline is limited. (See *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32 [seven years of practice in California prior to misconduct accorded only slight weight in mitigation].)

Evidence of good character (Std. 1.6(f)): Respondent provided eight character references from various friends and former clients, all of whom have known Respondent for periods ranging from months to years, speak highly of him, and claim knowledge of his misconduct. These include a friend who has known Respondent for several years, a law school advisor, and another friend who has known Respondent for 15 years. Additional witnesses include a retired surgeon and father of one of Respondent's high school classmates who has benefitted from Respondent's pro bono service following the reference's stroke in 2011, a former coworker who has known Respondent for several years, a friend and former client who has known Respondent for over 15 years, a court security officer who has known Respondent for five years, and a client who has known Respondent for just a few months, but whom Respondent has offered pro bono services.

Prefiling Stipulation: By entering into a pre-filing stipulation and sparing State Bar Court time and resources, Respondent has demonstrated remorse for his conduct and is entitled to mitigation. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

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 Silverton* (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 four acts 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 most severe sanction applicable to Respondent’s misconduct is standard 2.7, which provides for suspension or reproof for performance, communication, or withdrawal violations which are limited in scope or time. The degree of sanction depends on the extent of the misconduct and the degree of harm to the client.

Here, Respondent failed to perform in a client matter. He also failed to communicate, failed to secure a waiver from his client before accepting fees on the client’s from a third party and entered into an agreement with Staael-O’Rourke that required Staael-O’Rourke to withdraw her State Bar complaint. There is no evidence of specific harm other than delays, and the delays had no effect on Staael-O’Rourke’s overall case. Respondent’s lack of prior misconduct mitigates his multiple acts of misconduct, though his less than five years of practice at the time of the misconduct limits the weight available in mitigation. Respondent also produced evidence of good character, and thus mitigation does outweigh his aggravation. Under these circumstances, suspension is unnecessary, and the appropriate level of discipline will include a public reproof with conditions for one year. Ethics School and the MPRE are also required.

Prior cases are consistent with this level of discipline. In *Layton v. State Bar* (1990) 50 Cal.3d 889, the Supreme Court ordered 30 days actual suspension for an attorney who repeatedly failed in administration of estate, eventually resulting in the attorney's removal as executor. The absence of prior misconduct in 30 years of practice, the absence of gain from misconduct and both emotional and physical strain were mitigating, while the harm caused by denying beneficiaries access to the estate was aggravating, and the Supreme Court considered the related tax penalties incurred and interest lost as aggravating factors.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of December 8, 2015, the prosecution costs in this matter are \$3,066. Respondent further acknowledges that should the court reject this stipulation, or should the court grant relief from the stipulation, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT


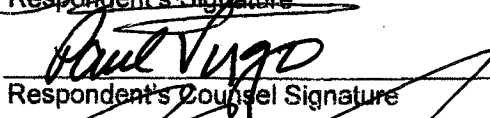

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School and Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: DANIEL BOCIC MARTINEZ	Case number(s): 15-O-12440
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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.

<u>12/21/2015</u> Date	 Respondent's Signature	<u>Daniel Bocic Martinez</u> Print Name
<u>12/23/2015</u> Date	 Respondent's Counsel Signature	<u>Paul Virgo</u> Print Name
<u>12/23/15</u> Date	 Senior Trial Counsel's Signature	<u>William Todd</u> Print Name

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In the Matter of: DANIEL BOCIC MARTINEZ	Case Number(s): 15-O-12440
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REPROVAL ORDER


Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reapproval, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department 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.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reapproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date 1/6/16


DONALD F. MILES
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 January 7, 2016, 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:

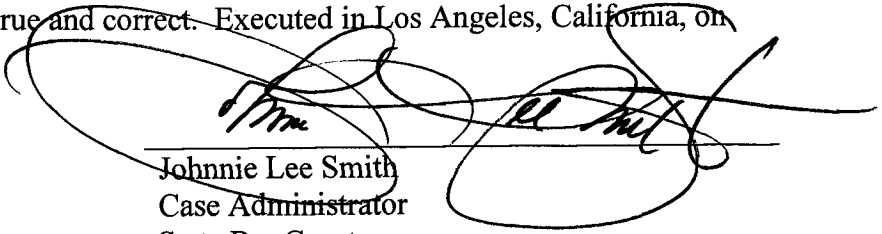
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**PAUL JEAN VIRGO
9909 TOPANGA BLVD # 282
CHATSWORTH, CA 91311**

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

WILLIAM TODD, Enforcement, LOS ANGELES

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 7, 2016.


Johnnie Lee Smith
Case Administrator
State Bar Court