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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>STAYED SUSPENSION</b>		
<p>Counsel For The State Bar</p> <p><b>Timothy G. Byer</b>                      Deputy Trial Counsel                      845 S. Figueroa Street                      Los Angeles, CA 90017-2515                      (213) 765-1325</p> <p>Bar # <b>172472</b></p>	<p>Case Number(s):  <b>16-O-17175</b></p>	<p>For Court use only</p> <p style="text-align: center; font-size: 2em;"><b>FILED</b></p> <p style="text-align: center;"><i>EE</i></p> <p style="text-align: center;"><b>MAR 12 2018</b></p> <p style="text-align: center;">STATE BAR COURT                      CLERK'S OFFICE                      LOS ANGELES</p>
<p>Counsel For Respondent</p> <p><b>Ellen A. Pansky</b>                      1010 Sycamore Ave., Ste. 308                      Pasadena, CA 91030                      (213) 626-7300</p> <p>Bar # <b>77688</b></p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND                      DISPOSITION AND ORDER APPROVING</p> <p><b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of:  <b>MARY XINH NGUYEN</b></p> <p>Bar # <b>204461</b></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 7, 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 **9** 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: (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(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
  - (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.

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- (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.
- (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. **See page 7.**
- (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.
- (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.

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- (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**

**Physical Difficulties, see page 7.**  
**Good character, see page 7.**  
**Pretrial Stipulation, see page 7.**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **one year**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general 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 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.

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- (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:
- (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:**

ATTACHMENT TO  
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MARY XINH NGUYEN

CASE NUMBER: 16-O-17175

**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.

Case No. 16-O-17175 (Complainant: Sil Pak)

FACTS:

1. On November 19, 2013, Sil Pak employed respondent to represent Pak in his property damage claim.
2. Due to a chronic illness for which respondent had been treated since 2015, respondent in February 2016 began to work primarily from her home in Pasadena, only occasionally visiting her office in Monterey Park. From February through July 2016, respondent delegated to a non-attorney employee the task of collecting respondent's office mail and alerting respondent to important correspondence as it arrived.
3. Respondent's employee did not inform respondent that respondent had received notices from the State Bar concerning her 2016 membership dues payment, which was delinquent, nor concerning her risk of suspension for non-payment.
4. On July 1, 2016, respondent was suspended for non-payment of her membership dues, and remained suspended until September 21, 2016. Respondent was unaware of her suspension due to her employee's failure to inform respondent of receipt of notices from the State Bar concerning her delinquent 2016 membership dues payment, nor concerning her risk of suspension for non-payment.
5. On July 7, 2016, respondent appeared at a mediation on behalf of Pak, in the case entitled *Sil Keun Pak, et al., v. Juan Jose Mena, et al.*, Orange County Superior Court Case No. 30-2015-00786770-CU-PA-CJC ("*Pak v. Mena*").
6. On August 19, 2016, respondent appeared on behalf of Pak at a Case Management Conference in *Pak v. Mena*.
7. In early September 2016, respondent's employee stopped making his customary daily telephonic updates to respondent, prompting respondent to make a visit to the Monterey Park office. At that time, respondent learned that her employee had not shown up to work for several days and had apparently quit without notice to her. On that visit, respondent also found unopened mail from the State Bar, including the notice of her administrative suspension for nonpayment of her membership dues.

8. When respondent learned of her administrative suspension for her non-payment of her membership dues, she promptly paid the dues and was returned to active status on September 21, 2016.

9. Following her return to active status, respondent hired a new administrative assistant/legal secretary, and instituted a procedure whereby all office related correspondence is scanned and promptly emailed to respondent for review.

#### CONCLUSIONS OF LAW:

10. By appearing on behalf of Pak at the July 7, 2016 mediation and at the August 19, 2016 Case Management Conference, respondent held herself out as entitled to practice law and actually practiced law when she was not an active member of the State Bar, in violation of Business and Professions Code, sections 6125 and 6126, and thereby willfully violated Business and Professions Code, section 6068(a).

#### ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

**No Prior Discipline (Std. 1.6(a)):** Respondent is entitled to mitigation for having practiced law for over 16 years without a prior record of discipline prior to the instant misconduct, which is unlikely to recur due to the office management procedures respondent has instituted. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49 [17 years of practice with no prior record of discipline is a significant mitigating factor].)(see also *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [over 10 years of practice with no prior record of discipline is significant mitigating factor].)

#### ADDITIONAL MITIGATING CIRCUMSTANCES.

**Good Character:** Respondent is entitled to some mitigation for her evidence of community service to the Vietnamese-American community, and moderate mitigation for her good character, attested to by five witnesses, including a rabbi, a paralegal, a legal secretary and an attorney, all of whom are aware of her misconduct to varying degrees. (*In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320, 325-326 [modest mitigation credit is given for the character evidence provided by four witnesses aware of the misconduct to varying degrees].)

**Physical Difficulties:** Respondent's chronic illness caused her to be absent from her office and to delegate certain office administrative duties to her employee, which resulted in respondent not receiving notice of her suspension. While lack of expert testimony may impact the weight of the evidence, it does not mean that this factor must be rejected in mitigation. *In re Brown* (1995) 12 Cal.4<sup>th</sup> 205, 222 [some mitigation for effects of attorney's illness despite lack of expert testimony].

**Pretrial Stipulation:** By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

#### 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).)

The most severe standard applicable to respondent’s misconduct is Std. 2.10(b), which provides that “suspension or reproof is the presumed sanction when a member engages in the practice of law or holds himself or herself out as entitled to practice law when he or she is on inactive status or actual suspension for non-disciplinary reasons, such as non-payment of fees[, with t]he degree of sanctions depend[ent] on whether the member knowingly engaged in the unauthorized practice of law.”

Respondent’s appearance in court while suspended for non-payment of her membership dues was due to her lack of actual knowledge of the non-payment of her dues and the imposition of administrative suspension. It was neither grossly negligent nor intentional. Her misconduct is mitigated by the lack of a prior record of discipline in her 16 years of practice, the medical condition which precipitated her office management supervision problems, her good character, and her willingness to enter into this pretrial stipulation. Weighing all factors together, one year of stayed suspension and two years of probation is within the range provided in the Standard and is sufficient to protect the public.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of February 23, 2018, the discipline costs in this matter are \$3,758. 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.

#### **EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION (“MCLE”) CREDIT**

Respondent may not receive MCLE credit for completion of State Bar Ethics School ordered as a condition of reproof or suspension]. (Rules Proc. of State Bar, rule 3201.)



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In the Matter of: <b>MARY XINH NGUYEN</b>	Case number(s): <b>16-O-17175</b>
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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>2/26/18</u> Date	<u>Mary X. Nguyen</u> Respondent's Signature	<u>Mary X. Nguyen</u> Print Name
<u>2/28/18</u> Date	<u>Ellen A. Pansky</u> Respondent's Counsel Signature	<u>Ellen A. Pansky</u> Print Name
<u>3.1.18</u> Date	<u>Timothy G. Byer</u> Deputy Trial Counsel's Signature	<u>Timothy G. Byer</u> Print Name

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In the Matter of: MARY XIHN NGUYEN	Case Number(s): 16-O-17175
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### 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

On page 8 of the Stipulation, after the fourth full paragraph, the following is inserted:

"The recommended discipline is also supported by case law. In *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, the attorney was suspended for 60 days after holding himself out as entitled to practice law in a single instance while suspended for non-payment of membership fees. In addition, the attorney repeatedly failed to communicate with a client and lied to her about the services he had performed on her behalf and the status of her case, which had been dismissed due to his failure to timely serve the complaint. The attorney also failed to cooperate in a disciplinary investigation. The court found as an aggravating factor significant harm to the client, who lost her cause of action due to the attorney's reckless incompetence. Additional aggravation was found because the attorney did not appear at his disciplinary proceeding, resulting in his default. But the court considered the attorney's 12 years without prior discipline to be an "important" mitigating factor.

Respondent's misconduct was far less egregious than in *Johnston*. Respondent's misconduct did not involve deceit; there was no client harm; she was culpable of a single ethical violation, rather than four; and there were no aggravating circumstances. Thus, respondent's misconduct warrants less discipline than in *Johnston*."

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.)**

March 12, 2018  
Date

  
YVETTE D. ROLAND  
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 March 12, 2018, 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:

**ELLEN ANNE PANSKY  
PANSKY MARKLE ATTORNEYS AT LAW  
1010 SYCAMORE AVE UNIT 308  
S PASADENA, CA 91030 - 6139**

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

**TIMOTHY G. BYER, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 12, 2018.



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Erick Estrada  
Court Specialist  
State Bar Court