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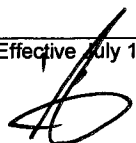
State Bar Court of California  
Hearing Department  
Los Angeles  
ACTUAL SUSPENSION

<p>Counsel For The State Bar</p> <p><b>Abraham M. Bagheri</b> Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1216</p> <p>Bar # 294113</p>	<p>Case Number(s): 17-H-00689-DFM</p> <p>kwiktag® 237 300 201</p> 	<p>For Court use only</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b></p> <p><i>rs</i></p> <p><b>JAN 30 2018</b></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p><b>Kent VanderSchuit</b> 300 Carlsbad Village Dr. Ste 416 Carlsbad, CA 92008</p> <p>Bar # 192674</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: <b>KENT VANDERSCHUIT</b></p> <p>Bar # 192674</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 9, 1997**.
- (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 **12** 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):
- 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 [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 **15-O-11591. (See page 9; Attached as Exhibit 1, 13 pages.)**
  - (b)  Date prior discipline effective **January 26, 2016.**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Rule of Professional Conduct 3-110(A); Business and Professions Code, section 6068(m).**
  - (d)  Degree of prior discipline **Private reproof of one year.**
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (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.

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- (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. **(See page 9.)**
- (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.
- (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.
- (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 convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**Pretrial Stipulation, see page 8.**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **one (1) year**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and 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:
- (b)  The above-referenced suspension is stayed.
- (2)  **Probation:**
- Respondent must be placed on probation for a period of **one (1) year**, 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 **thirty (30) days**.
- 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:

**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 present learning and ability in the general law, pursuant to standard 1.2(c)(1), 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 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: **Respondent attended Ethics School on December 15, 2016 and passed the test given at the end of the session. (See rule 5.135(A), Rules Proc. of State Bar [attendance at Ethics School not required where the attorney completed Ethics School within the prior two years].)**

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- (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.**
- 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:**



11. Respondent timely filed his quarterly report due by October 10, 2016.

12. On December 15, 2016, respondent attended Ethics School.

13. On January 15, 2017, respondent untimely filed his quarterly report due by January 10, 2017.

14. Respondent timely filed his quarterly report due by January 26, 2017.

15. Respondent timely submitted proof of Ethics School attendance to the Office of Probation by January 26, 2017.

16. Respondent failed to take and pass the MPRE and provide satisfactory proof of such passage to the Office of Probation by January 26, 2017.

17. On February 2, 2017, the Office of Probation mailed a letter to respondent's official State Bar membership records address informing him that he was not in compliance with the terms and conditions of his reproof because he had (1) filed a late quarterly report and (2) not provided proof of successful passage of the MPRE by January 26, 2017.

18. On February 2, 2017, the Office of Probation emailed a copy of the February 2, 2017 letter to respondent's membership records email address.

19. Respondent received the February 2, 2017 letter and email.

20. On February 9, 2017, the Office of Probation referred respondent to the Office of Chief Trial Counsel for the following reasons:

a. Respondent did not timely file a quarterly report for January 10, 2017;

b. Respondent did not provide the Office of Probation proof of successful passage of the MPRE by January 26, 2017.

21. To date, respondent has not provided proof of successful passage of the MPRE to the Office of Probation.

#### CONCLUSIONS OF LAW:

22. By failing to timely submit to the Office of Probation the quarterly report that was due on January 10, 2016; and by failing to provide to the Office of Probation proof of successful passage of the MPRE by January 26, 2017, respondent failed to comply with the conditions attached to the private reproof imposed by the State Bar Court in case number 15-O-11591, in willful violation of Rules of Professional Conduct, rule 1-110.

#### AGGRAVATING CIRCUMSTANCES.

**Prior Record of Discipline (Std. 1.5(a)):** Respondent has one (1) prior record of discipline. In case number 15-O-11591, effective January 26, 2016, respondent received a private reproof with conditions including that respondent take and pass the Multistate Professional Responsibility



Examination (“MPRE”) within one year from the effective date of the discipline, submit written quarterly reports to the Office of Probation at quarterly intervals, and attend and complete Ethics School. The reproof was based on violations of Rule of Professional Conduct 3-110(A) (intentional, reckless, or repeated failure to perform legal services with competence) and Business and Professions Code section 6068(m) (failure to keep a client reasonably informed of significant developments in a matter). Respondent received mitigation credit for no prior record of discipline, good character, and for entering into a pre-filing stipulation. The parties stipulate to the authenticity of Exhibit 1, a copy of respondent’s prior discipline.

**Indifference Towards Rectification/Atonement (Std. 1.5(k)):** On February 2, 2017, the Office of Probation sent a letter to respondent’s official State Bar membership records address informing him that he had not yet provided the Office of Probation proof of successful passage of the MPRE. Respondent received the letter. To date, respondent has not provided the Office of Probation proof of successful passage of the MPRE. For over ten months, respondent made no attempt to complete the condition even after the Office of Probation notified him of his noncompliance.

### **MITIGATING CIRCUMSTANCES.**

**Pretrial Stipulation:** By entering into this stipulation, respondent has acknowledged his 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].)

### **AUTHORITIES SUPPORTING DISCIPLINE.**

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

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

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

Standard 2.14 provides, "Actual suspension is appropriate for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the member's unwillingness or inability to comply with disciplinary orders." Here, respondent failed to comply with two conditions of his private reproof by untimely filing one quarterly report and failing to provide the Office of Probation with proof of passage of the MPRE within one year of the effective date of the reproof. More than ten months passed after respondent's MPRE deadline before he showed a willingness to comply with disciplinary orders. Therefore, discipline above the low end of the range suggested by Standard 2.14 may be considered.

Furthermore, Standard 1.8(a) requires that, "If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust." The burden is on respondent to show that the misconduct is minor and remote in time. (See *In re Silverton, supra*, 36 Cal. 4th at p. 92.) Respondent's misconduct is not remote because his reproof violations occurred less than one year from the effective date of his prior discipline. Moreover, respondent's conduct is not minor because more than 11 months have passed from the deadline by which respondent should have provided the Office of Probation with proof of passage of the MPRE. Respondent has yet to do so. Respondent will not be able to establish that the exceptions to Standard 1.8(a) apply.

Therefore, pursuant to Standard 2.14, a 30-day actual suspension is appropriate. Case law supports this result.

In *Conroy v. State Bar* (1990), 51 Cal.3d 799, Conroy received a private reproof based upon three unrelated incidents of misconduct. As a condition of probation, the Review Department ordered Conroy to take and pass the Professional Responsibility Examination (PRE) within one year of the reproof's effective date. Conroy passed the examination three months late. As a result, the State Bar initiated disciplinary proceedings against him for noncompliance with the prior disciplinary conditions. After Conroy defaulted to the charges brought against him, the State Bar Court recommended a one-year suspension, stayed, including a 60-day actual suspension. The Supreme Court agreed with the level of discipline. The Court deemed as mitigating the attorney's passage of the examination at the first opportunity possible after the deadline. Nonetheless, in determining Conroy's discipline, the Court noted aggravating circumstances including Conroy's failure to appreciate the seriousness of the misconduct, prior record of discipline, and absence of remorse.

Here, respondent's misconduct is similar in severity to Conroy's misconduct. Unlike Conroy, who took the PRE at the first opportunity possible after the MPRE deadline and complied with probation conditions three months late, respondent still has not complied with an uncompleted probation condition after more than 11 months from the date it was due. However, unlike Conroy, respondent has agreed to a pre-trial stipulation which carries significant weight and offsets respondent's aggravating circumstances.

On balance, and in light of the mitigating circumstance, a 30-day actual suspension is appropriate to protect the public, the courts, and the legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession.

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**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of January 5, 2017, the discipline costs in this matter are \$5957. 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**

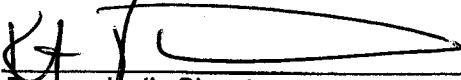
Respondent may not receive MCLE credit for completion of: **State Bar Ethics School or any other educational course(s) to be ordered as a condition of reproof or suspension].** (Rules Proc. of State Bar, rule 3201.)


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In the Matter of: <b>KENT VANDERSCHUIT</b>	Case number(s): <b>17-H-00689-DFM</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.

1/9/18                                            **KENT VANDERSCHUIT**  
Date                              Respondent's Signature                              Print Name

1/9/18                                            **ABRAHIM M. BAGHERI**  
Date                              Deputy Trial Counsel's Signature                              Print Name

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In the Matter of:  
**KENT VANDERSCHUIT**

Case Number(s):  
**17-H-00689-DFM**

### 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.
1. On page 4 of the Stipulation, under "Additional mitigating circumstances:" "page 8" is deleted, and "page 9" is inserted.
  2. On page 8 of the Stipulation, at paragraph 22, line 2, "January 10, 2016" is deleted, and "January 10, 2017" is inserted.

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.)**

Jan. 30, 2018  
Date

Cynthia Valenzuela  
CYNTHIA VALENZUELA  
Judge of the State Bar Court



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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>REPROVAL</b>			<b>CONFIDENTIAL</b>
<b>Counsel For The State Bar</b>  <b>Erin McKeown Joyce</b> <b>Senior Trial Counsel</b> <b>845 South Figueroa Street</b> <b>Los Angeles, California 90017</b> <b>(213) 765-1397</b>  <b>Bar # 149946</b>	<b>Case Number(s):</b> <b>15-O-11591-RMR</b>	<b>For Court use only</b>  <div style="text-align: center;"> <p style="font-size: 24pt; font-weight: bold;">FILED</p> <p style="font-size: 18pt; font-weight: bold;">JAN 05 2016 P.B.</p> <p style="font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> </div>	
<b>Counsel For Respondent</b>  <b>David C. Carr</b> <b>Law Office of David Cameron Carr PLC</b> <b>525 B St Ste 1500</b> <b>San Diego, CA 92101</b> <b>(619) 696-0526</b>  <b>Bar # 124510</b>	<b>Submitted to: Settlement Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b>  <b>PRIVATE REPROVAL</b>  <input type="checkbox"/> <b>PREVIOUS STIPULATION REJECTED</b>		
<b>In the Matter of:</b> <b>KENT VANDERSCHUIT</b>  <b>Bar # 192674</b>  <b>A Member of the State Bar of California</b> <b>(Respondent)</b>			

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- (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 **10** 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."

*PS*  
*12-4*

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- (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: (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
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline".



(Do not write above this line.)

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- (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.
- (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 8 of the Attachment to the Stipulation Re Facts, Conclusions of Law and Disposition for a fuller explanation and factual basis for this mitigating circumstance.**
- (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.

(Do not write above this line.)

- (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.

**See page 8 of the Attachment to the Stipulation Re Facts, Conclusions of Law and Disposition for a fuller explanation and factual basis for this mitigating circumstance.**

- (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:**

**Prefiling stipulation - See page 8 of the Attachment to the Stipulation Re Facts, Conclusions of Law and Disposition for a fuller explanation and factual basis for this mitigating circumstance.**

#### **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)**

(Do not write above this line.)

### **E. Conditions Attached to Repeal:**

- (1)  Respondent must comply with the conditions attached to the repeal for a period of one year.
- (2)  During the condition period attached to the repeal, 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 repeal. 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 repeal 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 repeal.
- (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.

(Do not write above this line.)

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(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.

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:      KENT VANDERSCHUIT

CASE NUMBER:            15-O-11591-RMR

**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-11591 (Complainants: Bart and Sally Hackley)**

**FACTS:**

1.      On September 11, 2013, Bart and Sally Hackley hired Respondent on behalf of the Hackley Family Trust to file an investor fraud lawsuit against Michael Stewart and John Packard, and their related companies.
2.      The Hackleys entered into a hybrid attorney client agreement with Respondent, which provided for a \$5,000 flat fee and a 20% contingency fee.
3.      On October 22, 2013, Respondent filed a lawsuit in Orange County Superior Court entitled *Sally Hackley and the Hackley Family Trust v. Michael Stewart, et al.*, case no. 30-2013-00682766 (the "Hackley lawsuit").
4.      Stewart and Packard had been arrested and convicted of financial crimes related to the investor fraud scheme. Respondent learned by the end of 2013 that both defendants were judgment-proof, and facing criminal sentencing for their crimes.
5.      Respondent appeared at the Case Management Conference set for April 29, 2014. The court set a further status conference for July 21, 2014, for which Respondent received notice.
6.      Respondent failed to appear at the July 21, 2013 status conference. The court issued an order to show cause re dismissal for August 25, 2014. The court clerk sent notice to Respondent of the continued status conference.
7.      Respondent failed to appear at the August 25, 2014 order to show cause re dismissal hearing. The court ordered the case dismissed without prejudice at the hearing. The court clerk sent notice of Respondent of the dismissal.
8.      Despite receiving notice of the dismissal of the Hackley lawsuit, Respondent did not notify the Hackleys of the dismissal of the Hackley lawsuit.

## CONCLUSIONS OF LAW

9. By failing to appear at the July 21, 2014 status conference and the August 25, 2014 order to show cause hearing, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rule of Professional Conduct 3-110(A).

10. By failing to inform the Hackleys of the dismissal of the Hackley lawsuit, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code section 6068(m).

## ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES

**No Prior Discipline:** Respondent has been a member of the California Bar since December 9, 1997, and has had no prior record of discipline, over 18 years of practice. Respondent's conduct was limited to a single client matter in a short time frame, and appears aberrational. The misconduct is unlikely to reoccur. This is substantial mitigation. (*In the Matter of Corner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 106-107 [where the Review Department gave mitigating credit for over 12 years of discipline free practice despite seriousness of misconduct]).

**Good Character:** Respondent submitted four character letters from members of the legal community, who all confirmed that they knew the circumstances of Respondent's misconduct in the Hackley matter, but still attested to Respondent's good character. This evidence of Respondent's good character is properly considered a mitigating circumstance. (*In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171.)

**Prefiling Stipulation:** Respondent's cooperation at this early stage has saved the State Bar significant resources and time. Respondent's stipulation to the facts, his culpability, and discipline is a mitigating circumstance. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigating 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 Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney

misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.)

In this matter, Respondent is culpable of committing two acts of professional misconduct in one client matter.

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." Here Respondent's failure to perform with competence in violation of Rule of Professional Conduct 3-110(A) and failure to communicate in violation of Business and Professions Code section 6068(m) are both covered by Standard 2.7, which concerns performance, communication or withdrawal violations.

Under Standard 2.7(c):

(c) Suspension or reproof is the presumed sanction 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 or clients.

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Respondent's performance and communication violations were limited to a single client matter over a short period of time. The extent of the misconduct is small and the degree of harm is also limited, since Respondent's misconduct resulted in a dismissal without prejudice. Moreover, since both defendants were judgment-proof, the dismissal in no way resulted in financial harm to the Hackleys. A reproof is the appropriate level of discipline for Respondent's misconduct.

Respondent has been in practice almost 18 years with no prior discipline. The significant impact of this factor must be considered in assessing the appropriate level of discipline. Respondent also provided evidence of his good character in the form of four character letters. He has met with the State Bar to resolve this matter with a pre-filing stipulation. Based on the substantial mitigation of 18 years of discipline free practice, Respondent's demonstration of good character, his cooperation and the aberrational nature of the misconduct in this single client matter, imposition of a private reproof is warranted under Standard 2.7(c).

A public reproof will be sufficient to protect the public, the courts and the legal profession; to maintain high professional standards by attorneys and to preserve public confidence in the legal profession, the primary purposes of the attorney discipline system. (Std. 1.1).

#### **EXCLUSION FROM MCLE CREDIT**

Pursuant to Rule of Procedure 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School.






(Do not write above this line.)

In the Matter of: <b>KENT VANDERSCHUIT</b>	Case number(s): <b>15-O-11591</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.

_____	_____	Kent Vanderschuit
Date	Respondent's Signature	Print Name
12/21/15		_____
_____	Respondent's Counsel Signature	David C. Carr
Date	_____	Print Name
_____	_____	Erin McKeown Joyce
_____	Deputy Trial Counsel's Signature	Print Name
Date	_____	_____

(Do not write above this line.)

In the Matter of:  
KENT VANDERSCHUIT

Case Number(s):  
15-O-11591

### REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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.

1. On page 7 of the Stipulation, at numbered paragraph 6, line 1, "July 21, 2013" is deleted, and in its place is inserted "July 21, 2014".
2. On page 8 of the Stipulation, at line 2 of the paragraph bearing the heading "No Prior Discipline," "and has had no prior record of discipline, over 18 years of practice" is deleted, and in its place is inserted "and had no prior record of discipline in over 16 ½ years of practice at the time of his misconduct in this matter".
3. On page 9 of the Stipulation, fifth full paragraph, line 1, the first sentence is deleted, and in its place is inserted "Respondent had been in practice over 16 ½ years with no prior discipline at the time of his misconduct in this matter".
4. On page 9 of the Stipulation, at the sixth full paragraph (the paragraph before the heading "Exclusion From MCLE Credit"), line 1, "public reproof" is deleted, and in its place is inserted "private reproof".

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 reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.**

Date January 4, 2016

Rebecca Meyer Rosenberg  
REBECCA MEYER ROSENBERG, JUDGE PRO TEM  
Judge of the State Bar Court  
Pro Tem

**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 5, 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:

**DAVID C. CARR  
LAW OFFICE OF DAVID CAMERON CARR PLC  
525 B ST STE 1500  
SAN DIEGO, CA 92101**

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

**ERIN M. JOYCE, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 5, 2016.

*Paul Barona*

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Paul Barona  
Case Administrator  
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 30, 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:

KENT VANDERSCHUIT  
THE VANDERSCHUIT LAW GROUP  
300 CARLSBAD VILLAGE DR  
STE 416  
CARLSBAD, CA 92008

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

ABRAHIM M. BAGHERI, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 30, 2018.



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Mazie Yip  
Case Administrator  
State Bar Court