IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of	)	Case No. S196374
	)	
STEPHEN RANDALL GLASS,	)	
	)	
Applicant for Admission.	)	
	)	

REPLY OF THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA TO ANSWER TO PETITION FOR REVIEW

CONFIDENTIAL PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6060.2; CALIFORNIA RULES OF COURT, RULE 9.15(d)

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I. INTRODUCTION

The Committee of Bar Examiners (the "Committee") does not dispute that Applicant has moved on from journalism and is now fully engaged in law-related activities. He is working as a law clerk at Carpenter, Zuckerman & Rowley, LLP, and by all accounts he is doing a fine job. According to Applicant, however, the Committee is loath to focus on his present situation and instead has been carried away by the distant tide of his past misconduct. (Answer, p. 4, quoting from the Review Department Opinion, p. 16.)

Applicant understates the Committee's position – this was much more than a rogue wave that washed ashore; in Applicant's own words, this was a "tsunami." (Answer, p. 38; RT, Vol. 5, p. 191/18-19.) Applicant has failed to address the damage and destruction he has caused in one profession. He essentially abandoned his victims – the subjects of his libelous articles, the prominent news publications he worked for, and the entire journalistic community – and left them to deal with the wreckage on their own.

He now seeks to become a member of the honorable and learned legal profession in California.

Throughout Applicant's Answering Brief, he attempts to explain away the deficiencies in his behavior over the last 13 years – his failure to timely issue apologies; his 11-year delay in creating a comprehensive list of all of his fabricated articles, which resulted in some of the publications not being able to ever issue full and complete retractions; and his misrepresentation to the New York Bar. In each instance, he has an excuse for why his acts were incomplete, misunderstood, or ill-timed. He should have been proactive and taken affirmative steps outside of the shadows of his own personal enterprises[1] to correct the wrongs that he imposed upon others. Yet time and time again he failed to do so.

The Committee believes the record more than demonstrates that Applicant has not established the requisite showing of rehabilitation, given his past misdeeds that have lingered without redemption, to be certified as an attorney in this state with good moral character.

II. ARGUMENT

A. Applicant Waited Until August 2009, During The Course Of These Moral Character Proceedings, To Fully Identify All Of His Fabrications.

Applicant asserts with conviction: "Contrary to the Committee's contentions, Mr. Glass has identified all of his fabrications." (Answer, p. 37.) Applicant misses the point

[1] For instance, the majority of his purported written apologies coincided with the publication of his novel *The Fabulist* and his pending New York Bar application. (RT, Vol. VIII, p. 24/11-19.) Further, his appearance on "60-Minutes" came on the eve of the release of his novel and was arranged by his publisher. (RT, Vol. IX, p. 86/12-21.)

– the fact is that Applicant only just compiled a full list of his fabricated articles in August 2009 (more than ***11 years*** after he was outted as a fraud) and only then in connection with these moral character proceedings.[2] (State Bar Exhibit 2, pp. 3-13.) Notably, the list contains 42 fabricated articles[3] – a large enough number to be significant, but not so large that a self-proclaimed meticulous and tenacious individual couldn't have pieced it together sooner.

In conjunction with the list, Applicant submitted the following statement: "[W]hile I am greatly ashamed and remorseful about my lying, I am now forthright and candid about my years of misconduct." (State Bar Exhibit 2, p. 4/7-8.) Applicant's sense of remorse and candor, however, came more than a decade late, and the full list of fabrications was only compiled when it suited him, and not when it was most needed by his victims.

B. <u>Applicant's Level Of Productivity During The Time He Claims Emotional Distress Belies His Assertion That He Was Unable To Timely Atone For His Conduct</u>.

Applicant claims that he became severely distraught after the scandal broke, almost to the point that he was unable to function. He states that he was "under severe emotional distress and contemplating suicide" and that "due to his emotional state" he was unable to concentrate on the task of identifying all of the fabrications and basically

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[2] Applicant prepared this list in a declaration he presented to the Office of the Chief Trial Counsel on August 20, 2009, for use in the trial on this matter before the State Bar Court Hearing Department. (State Bar Exhibit 2, p. 4/4-6.)

[3] Applicant identified 35 articles he fabricated that were published by *The New Republic* ("*TNR*"), 1 published by *Harper's*, 1 by *Policy Review*, 2 by *Rolling Stone*, and 3 by *George*.

incapable of interacting with people to make amends. (Answer, pp. 38-39.)

While suffering from this acute mental anguish, which allegedly prevented him from being able to assist the victims of his wrongdoings, astonishingly, he was able to excel in other capacities and complete and master complicated tasks that benefitted him. He was able to finish law school at Georgetown with honors,[4] pass the New York Bar Examination, hold various research and law clerk positions, sign a contract with Simon & Schuster to author a novel that resulted in a six-figure advance, write the novel, and submit it for publication.

He was able to do all of this between 1998 and 2003. Yet he didn't begin writing most of his apology letters until after he graduated from law school – with the bulk of them being sent between 2001-2004[5] (see Review Department Opinion, p. 7), and it wasn't until 2009 that he took the initiative to sit down and for the first time compile a full list of all of his fabricated articles. (State Bar Exhibit 2, pp. 3-13.)

Applicant's numerous accomplishments contradict his claim that he was incapacitated. This Court has rejected claims of emotional paralysis as an excuse when the record demonstrates contemporaneous productive conduct and activity in other areas:

> Petitioner's claim of emotional incapacity is ... belied by his conduct. To reiterate, the gist of his claim is that his emotional state prevented him from

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[4] Applicant "had an extremely high grade-point average at the end of his first year. He was one of the highest ranking in his class." (RT, Vol. II, p. 179/13-20.) His Civil Procedure grade was his worst grade, a B+. (RT, Vol. II, pp. 186/18-188/1.) He ended up graduating *magna cum laude*, one of the top students in his class. (RT, Vol. II, p. 188/1-4.)

[5] In the declaration Applicant provided to Trial Counsel on August 20, 2009, he stated that his apology letters were sent in 2003. (State Bar Exhibit 2, p. 3/20-24.)

> paying attention to his disciplinary proceedings and thus from complying with rule 955. He states, 'I could not open letters I received from the State Bar . . . . I did everything possible to avoid the issues regarding the State Bar. . . . I have been unable to deal with the emotional issues surrounding my license.' Petitioner's conduct, however, demonstrates that he paid close attention to the proceedings when doing so might benefit him. His 'incapacity' appears to have surfaced only when it worked to his advantage. For example, in response to our May 20, 1987, interim suspension order, he promptly petitioned us to set aside or temporarily stay our order. On June 17, we briefly delayed the effective date of the order. In August, petitioner filed two more applications for a further stay, both of which we denied. This activity is significant because it conflicts with petitioner's claim that he was incapacitated from complying with rule 955 in August and September 1987.

(*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 128-29 [266 Cal. Rptr. 341, 785 P.2d 889].)

Similarly, here, the record demonstrates that Applicant has always remained highly functional.[6] Regardless, his claim of emotional incapacitation after he was fired from *TNR* in 1998 does not justify his failure to make amends at a later time. Even the Review Department majority concedes as much. (See Review Department Opinion, p. 6.)

C. <u>Applicant Profited From His Wrongdoing Rather Than Giving Back To Those He Harmed</u>.

Applicant earned a substantial sum of money from his novel *The Fabulist* – a fictionalized account of his lies and deceit. The $190,000 (less agent's fees) he received, he used exclusively for his own personal benefit. (Answer, p. 55, RT, Vol. IX, pp. 86/5-

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[6] Julie Hilden, Applicant's life partner, testified that when they first met in 1998, he was depressed and "had aftereffects of everything that he did and everything that happened as a consequence." (RT, Vol. IV, p. 107/20-22.) However, she believes that "Steve was always functional." (RT, Vol. IV, p. 107/19.)

87/9.) "Those earnings were the 'principal way' [he] supported himself and constituted 'virtually all' of his income from August 2001 through October 2004." (Answer, p. 55.) He also used this money to "pay for his ongoing [psychiatric] therapy" and "his legal expenses, which exceeded $50,000." (Answer, p. 55.)

Applicant argues that the Committee's focus in this regard "distract[s] attention from the real issues – whether Mr. Glass presently has good character and has been rehabilitated, and whether he has made amends that are truly meaningful." (Answer, p. 55.) The Committee respectfully disagrees. The concept of Applicant profiting from his wrongdoing appears inconsistent with the notion of moral rehabilitation. Applicant could have, and the Committee believes should have, used the money to correct his wrongs, to pay back the victims of his lies, or to fund charitable programs benefiting the journalism profession, which he damaged so greatly. These are not meaningless, futile gestures; rather, disgorgement of the profits would have demonstrated a basic act of repentance, integrity, respect, and good will toward others. In short, Applicant focused on cashing in on his infamy, while continuing to ignore his responsibility to assist his victims.

D. <u>Applicant's Therapy Is Only Beneficial To Him</u>.

The Committee does not dispute that Applicant has undergone extensive therapy.[7]

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[7] Applicant erroneously asserts that the Committee and the Review Department's dissenting opinion misstated the testimony of his expert, Dr. Rosenthal. Applicant claims that Dr. Rosenthal did not state that he was still in the "process" of recovering from fabricating in 2005. (Answer, p. 16.) In fact, Dr. Rosenthal, when asked about the condition that caused Applicant to lie, testified: "[Glass] was still – he was in the process of understanding what had happened, and accepting responsibility for it, and dealing with it." (RT, Vol. VIII, p. 148/13-22.) Clearly, Applicant's treatment has been on-going, and as of 2005, he was still dealing with the underlying issues that caused him to lie.

He has been treating with several psychiatrists over the past 13 years, one of whom he treated with early on as frequently as four times a week. (Answer, p. 12.) Fortunately, Applicant had the profits from his book sales to pay for this on-going therapy. (Answer, p. 55.) While his recovery efforts are admirable, the point is that the benefit of the treatment inures to Applicant and is personal to him. (See *In re Menna* (1995) 11 Cal.4th 975, 990 [47 Cal. Rptr.2d 2, 905 P.2d 944] [therapeutic efforts, while commendable, are somewhat mitigated by the personal stake an applicant has in maintaining his own recovery].)

E. <u>It Was Applicant's Drive to Succeed, Not His Age, That Defined His Behavior</u>.

Applicant contends that his "youth" at the time of his transgressions mitigates in favor of his rehabilitation. (Answer, p. 10.) However, applicant was actually 23-25 years of age when his fabrications took place. He was a college graduate, with a well-paying job in a position of responsibility, and he was attending law school. Contrary to his assertion, he was not an adolescent engaging in youthful indiscretions; he was an adult who knew right from wrong. He clearly understood the nature of his fraudulent acts and yet continued to engage in dishonest behavior because he enjoyed the excitement and professional success that the lies brought him. (RT, Vol. VII, p. 111/7-12.) He even went so far as to devise elaborate cover-ups to avoid being caught – he created phony notes, websites, voice mail messages, business cards, and newsletters to cover up his acts of deceit. (RT, Vol. V, pp. 152/15-154/25.) At one point he convinced his own brother to pose as a fake source. (Review Department Opinion, p. 5; RT, Vol. II, pp. 30/16-

31/25, 43/17-44/4; RT, Vol. V, p. 172/18-25.)

The Committee believes that it is Applicant's character, not his youth, that is the telling factor here. Andrew Sullivan, an editor at *TNR*, is quoted in the record as saying:

> Many 20-something kids who do very well, don't do what [Glass] did, and not only that, but they're put under enormous pressure... and don't do what [Glass] did. They may screw up, and they [may] make an error. They may flame out, or they may have a spell where they can't produce anything for six months, but they don't do this. This wasn't a function of someone spiraling out of control. This was someone consciously and systematically destroying everything an institution stood for, not just the people at that institution, but the readers, the history of it. Its entire ethos was violated.

(RT, Vol. IX, pp. 151/14-152/25.)[8]

F. The Passage of Time Relied Upon By Applicant To Support His Rehabilitation Has Been Greatly Inflated.

Applicant asserts that substantial time (13 years) has elapsed since his misconduct occurred, and that from 1998 to the present he has "engaged in a regular course of conduct that shows a concerted effort to rehabilitate from those serious errors in judgment." (Answer, pp. 19-20, quoting from the Hearing Department Decision, pp. 18-19.) Assuming, arguendo, that this was the benchmark period for Applicant's rehabilitation, during a significant portion of that time, Applicant was under the scrutiny of the New York Bar (2002-2004) and the California Bar (2007 to present). However, "[g]ood conduct generally is expected from someone whose character is under scrutiny by the State Bar." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099 [99 Cal. Rptr.2d 130, 5 P.3d 186].) Applicant is not entitled a continuous stretch of 13 years of rehabilitation

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[8] When asked about this quote by Andrew Sullivan, Applicant confirmed the general substance of Sullivan's statement. (RT, Vol. IX, pp. 152/6-153/15.)

credit.

Moreover, the Committee contends that the operative rehabilitation period is measured from the date of the last act of misconduct to when Applicant sought a moral character determination from the Committee. (*In re Gossage, supra*, 23 Cal.4th at p. 1099.) Applicant's last bad act occurred in 2003 when he made a misrepresentation to the New York Bar. Using this calculation, Applicant would only have approximately 3 years of reform before filing his moral character application in California in 2007.

G. Applicant's Attempt To Minimize His Misrepresentation To The New York Bar Is Unavailing.

Applicant tries to downplay a significant misrepresentation he made to the New York Bar. (Answer, pp. 47-48.) In his New York Bar application, he stated that he "worked with all three magazines and other publications ... to identify which facts were true and which were false in ***all*** of [his] stories, so they could publish clarifications." (RT, Vol. II, p. 114/2-21; RT, Vol. VII, p. 97/4-11 [emphasis added].) Applicant testified that he needed to demonstrate to the New York Bar that he recognized the wrongful nature of his actions and that this statement was important evidence with respect to showing that he was aware of his misdeeds and that he had attempted to make amends. (RT, Vol. VII, pp. 98/13-24, 100/6-18.)

Yet, this statement was false. Applicant testified that he should have stated that he only "offered" to work with the publications. (RT, Vol. VI, p. 32/12-25; RT, Vol. VII, pp. 100/20-101/21; RT, Vol. VII, pp. 133/10-135/1.) And by "offered" to work, he meant through counsel. (RT, Vol. VI, p. 32/12-25.) This distinction is significant,

particularly to his victims. As expressed by Charles Lane with respect to *TNR*:

> [Glass] didn't work with us. The effort we went through, over the course of nearly a month, to investigate all those stories would have been unnecessary if he had worked with us, and had simply come forward and laid bare everything that was untrue in his stories. Instead, he sought legal counsel and, in effect, clammed up.

(RT, Vol. II, p. 115/1-7.)[9]

It is also significant in the context of these proceedings. Even the Review Department agrees that Applicant misrepresented the degree to which he cooperated in identifying the fabricated materials. (Review Department Opinion, p. 8.) Applicant's attempt to re-characterize it as anything else is simply disingenuous.

H. The State Bar Court Put Too Much Emphasis On Applicant's Character Witnesses And Inappropriately Marginalized The Committee's Witnesses.

The State Bar Court gave great weight to Applicant's 22 character witnesses, finding them to be "outstanding." (Review Department Opinion, p. 12.) Applicant spends a considerable amount of time in his Answering Brief underscoring the quality of these witnesses and the deference given to them. (Answer, pp. 21-36.) The Committee does not dispute their credibility, but emphasizes that, "character testimony, however laudatory, does not alone establish the 'requisite rehabilitation'" necessary for admission

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[9] Applicant contends that the retraction published by *TNR*, which stated, "[a]s a final step, we sought comment from Glass, who made further admissions," evidences that Applicant was working with the magazine. (Answer, p. 48.) Lane clarified this by testifying that when he wrote the statement, he was describing the process of stipulations with Applicant's counsel, whereby Applicant never did more than work through his attorneys and only acknowledged whether the list provided by *TNR* contained fabrications. Lane testified that, "[w]e did not feel it appropriate to publically describe that process of the stipulation, but we felt we had to in some way acknowledge that we had communicated with him, and this was the formulation we hit upon." (RT, Vol. II, pp. 88/13-89/10.)

to practice law in California. (*In re Menna, supra*, 11 Cal.4th at p. 988.) The Committee's concern is that the State Bar Court put too much emphasis on these character witnesses in assessing Applicant's overall rehabilitation. Regardless of how many witnesses Applicant called, or how well-received their testimony was, it simply is not enough to overcome Applicant's major shortcomings in this case. Applicant made a material misrepresentation to the New York Bar, he failed to identify all of his fabricated articles until 2009 – and only while under the pressure of these moral character proceedings – and, to date, he has made no significant effort towards making amends to his victims and the journalism profession, which he so denigrated.

The Committee also expresses concern over the fact that the State Bar Court gave "great weight" to Applicant's witnesses, but only marginal weight to equally credible witnesses on the Committee's side, finding that they had little contact with Applicant since 1998. (Answer, p. 7; Review Department Opinion, p. 13.)

For example, the State Bar Court gave considerable weight to Applicant's witness, Martin Peretz – an owner of *TNR* (see Answer, p. 21; Review Department Opinion, p. 12; Hearing Department Decision, pp. 23-24), who admittedly had only sporadic contact with Applicant over the years. Mr. Peretz testified that: "I was not in regular communication with Steve [Glass] before or after [Glass's firing in 1998], but I had very responsible people like Chuck [Charles Lane] doing this, and lawyers, and I was not going to engage in psychotherapy with Steve." (RT, Vol. II, p. 57/2-5.) When asked whether Peretz had maintained contact with Applicant since Applicant's departure from *TNR*, Peretz testified: "Well, I would say peripatetic contact. I used to ask one of his friends, who's

an old friend of the family, how Steve was doing. I probably saw him three times over the last decade-plus. We probably spoke on the phone maybe another three or four times, but that was the extent of our contact." (RT, Vol. II, pp. 136/21-137/1.)

By comparison, the Committee's witness, Charles Lane, a former editor at *TNR*, was accorded only "limited weight." (Review Department Opinion, p. 13.) Lane had neither seen nor talked to Applicant since 1998; however, Lane was one of the victims most affected by Applicant's misconduct. He was Applicant's direct supervisor at *TNR* (the publication with the largest number of fabricated articles). Lane uncovered Applicant's frauds, fired him, and then was tasked with trying (unsuccessfully) to get Applicant to prepare a full list of fabrications. (RT, Vol. II, p. 57/2-5.) Since his termination from *TNR*, Applicant failed to engage in any meaningful outreach to Lane. The fact that Lane has not had any contact with Applicant since 1998 is Applicant's fault, not Lane's.

Lane's testimony is just as relevant as Peretz's testimony, if not more relevant, and should have been given greater weight by the State Bar Court.

I. Applicant's "*Pro Bono*" Work Was Related To His Paid Employment At Carpenter, Zuckerman & Rowley, LLP.

Applicant contends that he has performed hundreds of hours of *pro bono* work over the past several years, which included legal research for attorneys on behalf of underprivileged youth, victims of race-based violence, and victims of drunk drivers. (Answer, p. 19.) However, this work was done solely in connection with his employment

at Carpenter, Zuckerman & Rowley, LLP, where Applicant is a salaried employee.[10] (RT. Vol. IX, p. 226/9-10.) Even the State Bar Court had difficulty identifying this as *pro bono* work. (RT, Vol. IX, p. 227/8-10.)

J. The State Bar Court Applied The Wrong Standard.

Applicant claims there are no important questions of law that need to be determined in this case. (Answer, pp. 6-9.) The Committee begs to differ. The Review Department clearly resolved all reasonable doubts about Applicant's rehabilitation in his favor and gave him the benefit of any conflicting but equally reasonable inferences flowing from the evidence. (Review Department Opinion, p. 15.) This is contrary to the standard applied most recently by this Court: "Where serious or criminal misconduct is involved, positive inferences about the applicant's moral character are more difficult to draw, and negative character inferences are stronger and more reasonable." (*In re Gossage, supra,* 23 Cal.4th at p. 1098.) Review in this case is appropriate to address the State Bar Court's errant ruling in this regard.

K. The Decision Of The State Bar Court Is Not Binding On This Court.

Applicant repeatedly points to the Review Department's overwhelming finding of present moral fitness, disregarding the fact that it was a 2-1 split decision, with a strong dissent. (See e.g., Answer, pp. 1, 3, 8, 10.) Granted, the State Bar Court's findings are entitled to great weight, but they are not binding on this Court. The Committee also has special expertise and authority in this area, which has been expressly recognized and

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[10] In 2007 Applicant earned $99,000 and in 2008 his salary increased to $154,000. (RT, Vol. IX, p. 162/2-13.)

accorded corresponding weight:

> [T]he decision of the State Bar Court is merely provisional; the Committee may concur in that decision, in which case it becomes final after the period for review has expired, or it may affirmatively challenge the State Bar Court's ruling, in which case it becomes conclusive only after this court has either granted or denied review.
>
> Thus, the determinations of both the Committee and the State Bar Court as to moral fitness play an integral role in the ultimate decision by this court whether to admit an individual to the practice of law, and both are entitled to substantial weight within their respective spheres. Neither, however, is ultimately binding. '[W]e independently examine and weigh the evidence and pass on its sufficiency.' (Citation omitted).

(*In re Menna, supra,* 11 Cal.4th at p. 985.)

The Committee believes that Applicant has not met his burden of good moral character and exemplary conduct necessary in a case such as this, where his past misconduct is extremely serious, "appalling," and of "staggering" proportions. (Review Department Decision, pp. 4, 5.)

III. CONCLUSION

For the reasons set forth above and the reasons discussed in the Committee's Petition,[11] the Committee respectfully requests that review be granted in this case, that the decision of the State Bar Court be set aside, and that this Court decline to certify

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[11] The Committee withdraws its reference to the contents of the Newseum display dedicated to Applicant. (Petition for Review, pp. 19-20.) The fact that the Newseum display exists, however, is still in evidence. (Hearing Department Decision, p. 8.)

Stephen Randall Glass for admission to practice law in California.

Dated: October 3, 2011

Respectfully submitted,

STARR BABCOCK
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WORD COUNT CERTIFICATE PURSUANT TO CALIFORNIA RULE OF COURT 8.504(d)(1)

I, Joan E. Sundt, state as follows:

I. I am the secretary to counsel for real party of interest The State Bar of California in the above-entitled action.

II. I certify that the word count of the computer software program used to prepare this document is 4,113 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 3, 2011, at San Francisco, California.

Joan E. Sundt

PROOF OF SERVICE BY MAIL

I, Joan Sundt, hereby declare: that I am over the age of eighteen years and am not a party to the within above-entitled action, that I am employed in the City and County of San Francisco, that my business address is The State Bar of California, 180 Howard Street, San Francisco, California 94105.

On October 3, 2011, following ordinary business practice, I placed for collection for mailing at the offices of the State Bar of California, 180 Howard Street, San Francisco, California 94105, three copies of **REPLY OF THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA TO ANSWER TO PETITION FOR REVIEW (CONFIDENTIAL PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6060.2; CALIFORNIA RULES OF COURT, RULE 9.15(d))** in an envelope addressed as follows:

Susan L. Margolis, Esq.	Colin P. Wong, Esq.
Arthur l. Margolis, Esq.	Administrative Officer for the State Bar Court
Margolis & Margolis LLP	The State Bar of California
2000 Riverside Drive	180 Howard Street
Los Angeles, CA 90039	San Francisco, CA 94105-1639

I am readily familiar with the State Bar of California's practice for collection and processing correspondence for mailing with the U.S. Postal Service and, in the ordinary course of business, the correspondence would be deposited with the U.S. Postal Service on the day on which it is collected at the business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California this 3rd day of October, 2011.

Joan Sundt