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Counsel for the State Bar OFFICE OF THE CHIEF TRIAL COUNSEL ROBIN B. HAFFNER, No. 14948 180 Howard St. San Francisco, CA 94105	Case Number(s) 00-0-14753 01-0-4502 01-0-5182 02-0-11561 CONFIDENTIAL LODGED <i>AS</i> APR 03 2003 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO	(for Court use) JUL 10 2006 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO PUBLIC MATTER
Counsel for Respondent JEFFREY BERGER In Pro Per 460 Filbert St., #100 San Francisco, CA 94133	Submitted to Pilot Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW kwiktag® 022 604 088  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of JEFFREY BERGER Bar # 104227 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted December 3, 1982
 (Date)

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.

(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." This stipulation consists of 17 pages.

(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) 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.

(7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§ 6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component (attachment) of this stipulation under specific headings, i.e., "Facts", "Dismissals", "Conclusions of Law."

3. Aggravating Circumstances (Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b).) Facts supporting aggravating circumstances are required.

- (1) Prior Record of Discipline [see standard 1.2(f)]
- (a) State Bar Court Case # of prior case _____
- (b) Date prior discipline effective _____
- (c) Rules of Professional Conduct/State Bar Action violations _____

- (d) Degree of prior discipline _____
- (e) If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline"
- (2) Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) 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.
- (4) Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) Lack of Cooperation: Respondent displayed a lack of candor and cooperation to the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7) Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct.
- (8) No aggravating circumstances are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [stand. 1.2(e)]. 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 deemed serious.
- (2) No Harm: Respondent did not harm the client or person who was the object of the misconduct.
- (3) Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) Remorse: Respondent promptly took objective steps spontaneously demonstrating 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 of 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 in good faith.
- (8) Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (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 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:

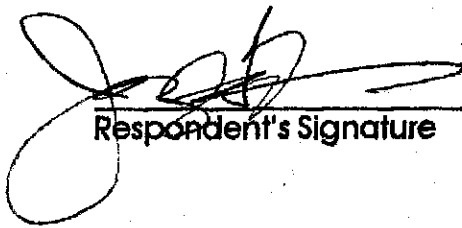
See attachment

Respondent enters into this stipulation as a condition of his/her participation in the Pilot Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Pilot Program Contract.

If the Respondent is not accepted into the Pilot Program or does not sign the Pilot Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Pilot Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

4/3/03
Date


Respondent's Signature

JEFFERY A. BERGER
Print Name

Date

Respondent's Counsel Signature

Print Name

4/3/03
Date


Deputy Trial Counsel's Signature

Robin Haffner
Print Name

ORDER

Finding this stipulation to be fair to the parties, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.

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; 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Pilot Program or does not sign the Pilot Program Contract. (See rules 135(b) and 802(b), Rules of Procedure.)

The effective date of the disposition is the effective date of the Supreme Court order herein, normally 30 days after the file date of the Supreme Court Order. (See rule 953(a), California Rules of Court.)

4-3-03

Date



Judge of the State Bar Court

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Jeffrey Berger

CASE NUMBER(S): 01-O-04502; 01-O-05182; 02-O-11561, 00-O-14753, et al.

FACTS AND CONCLUSIONS OF LAW.

A. Case No. 01-O-05182

Statement of Facts

Client Dillon hired respondent on or about July 1995 to represent him on a contingency basis in a personal injury matter. Dillon received injuries in a nightclub brawl, and sought to sue the nightclub. On or about November, 1995, respondent filed suit on Dillon's behalf, *Patrick Dillon v. The I-Beam*, case no. 970269, filed in Superior Court, County of San Francisco. On January 3, 1996, the Court dismissed the case because respondent failed to serve the defendant nightclub. On or about June 27, 1996, respondent appeared in court on the matter seeking to vacate a dismissal. He filed an affidavit with the court that the nightclub had closed down and he was unable to find the owner to serve him with the complaint. Respondent indicated in his pleadings that he "had been remiss" for failing to pursue service by publication. Respondent advised the court he would effectuate service within two weeks. The Court set aside the dismissal on or about June 27, 1996. Thereafter, respondent took no further action to serve the defendants on the Dillon case.

Client Dillon contacted respondent by letter in 1995 regarding the status of his case. Respondent advised Dillon that the case was going well. Dillon contacted respondent again in 1998, and again respondent advised him the case was going well. Dillon wrote again in 1999 and did not receive a reply from respondent regarding the status of his case.

Dillon requested the return of his file in a letter to respondent dated May 31, 1999. Respondent received this letter and failed to reply. Respondent returned the file to Dillon in October 2002, after the commencement of the State Bar investigation in this matter.

Conclusions of Law

The level of intent is as specified in *Durbin*, as in having a general purpose or willingness to commit the act or permit the omission (*Durbin v. State Bar* (1979) 23 Cal.3d 461, 467).

1. By failing to serve the defendant by publication or otherwise, and by failing to pursue the case since June, 1996, respondent failed to perform, in wilful violation of Rules of Professional Conduct, rule 3-110(A).
2. By repeatedly reassuring Dillon that the case was progressing, when, in fact, respondent was taking no action on the case, respondent failed to respond to reasonable inquiries and failed to communicate to the client significant developments in a matter in which the respondent accepted representation, in wilful violation of Business and Professions Code, section 6068(m).
3. By failing to return Dillon's file until October 2002, when Dillon requested the file in May of 1999, respondent failed to promptly return the client's file upon request, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

B. Case No. 01-0-04502

Statement of Facts

Client Elaine Loi hired respondent in August 1998 to represent her in a real estate matter against Mr. Victor Kasper and Mr. Gerald Olsen, for selling Ms. Loi real property without disclosing material facts regarding the condition of the property. Loi paid respondent \$500.00. Respondent performed some initial work on the case and sent a demand letter to opposing counsel. on or about October 15, 1998 and follow up letters dated October 29, 1998 and November 2, 1998. Respondent conferred with a mediator and sought to use mediation by writing to the defendants in January, 1999. One of the defendants was amenable to mediation. Respondent took some steps towards mediation, but as of September, 1999, no mediation had taken place. Loi requested the return of her file in September, 1999. From September 1999 through on or before June 2001, another attorney handled the matter. On or about June 2001, Loi returned the file to respondent and requested that he again represent her on the case. Respondent agreed to do so. Thereafter, respondent took no further action on the case.

On June 1, 2001, Loi contacted respondent and requested the status of her case. Respondent assured her that he would take action on her case and sent her written material within a week. Loi did not receive any material from respondent. Respondent provided no further information to Loi regarding the status of her case. Thereafter, Loi sought the return of her file. Respondent returned Loi's file in October, 2002, after the commencement of the State Bar investigation in this matter.

Conclusions of Law

The level of intent is as specified in Durbin, as in having a general purpose or willingness to commit the act or permit the omission (*Durbin v. State Bar* (1979) 23 Cal.3d 461, 467).

1. By failing to take any action on Loi's legal matter subsequent to June, 2001, respondent failed to perform, in wilful violation of Rules of Professional Conduct, rule 3-110(A).
2. By promising to provide Loi with information in June, 2001, and failing to do so, and by otherwise failing to inform Loi of the status of her case, respondent failed to respond to reasonable inquiries and failed to communicate to the client significant developments in a matter in which the respondent accepted representation, in wilful violation of Business and Professions Code, section 6068(m).

C. Case No. 02-O-11561

Statement of Facts

Client Alicia Weeks hired respondent in February, 1995 to represent her on a contingency basis in a personal injury matter resulting from Weeks' fall at a Student Center. Respondent negotiated a settlement of \$30,000 for Weeks in the case of *Weeks v. Caesar Chavez Student Center*, case no. 970714, filed in Superior Court, County of San Francisco. Respondent placed the funds in his trust account. Weeks' share was \$20,000, with respondent's fee \$10,000. On October 28, 1998, respondent gave Ms. Weeks \$13,942.76 stating that he reserved \$6,057.24 for a medical bill. Respondent sought to have the lien paid by Weeks' husband's insurance carrier. These efforts were unsuccessful. Respondent did not otherwise provide Weeks with an accounting on the case. Thereafter, respondent withdrew the funds from his trust account and spent them on matters unrelated to the Weeks case.

Weeks later learned the bill was not paid, when the medical provider sought payment from her directly. Weeks hired attorney Verna Miller to collect the funds from respondent. Respondent has not paid anyone the funds. Weeks sought an accounting of the funds. Verna Miller, attorney for Ms. Weeks, wrote respondent a letter on January 18, 2002, requesting an accounting of funds. Respondent did not provide Weeks an accounting until on or about January 6, 2003, after the commencement of the State Bar investigation of this case.

Conclusions of Law

The level of intent is as specified in Durbin, as in having a general purpose or willingness to commit the act or permit the omission (*Durbin v. State Bar* (1979) 23 Cal.3d 461, 467).

1. By misappropriating to his own use the funds he held in trust for Week's medical bill, respondent committed an act of moral turpitude, in wilful violation of Business and Professions Code, section 6106.

2. By misappropriating to his own use the funds he held in trust for Week's medical bill, respondent failed to maintain funds in trust, in wilful violation of Rules of Professional Conduct, rule 4-100.

3. By failing to provide Weeks with an accounting until 2003, respondent failed to render an accounting, in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

D. Case No. 00-O-14753

Statement of Facts

On or about August 27, 1999, respondent was hired by Denise Plumos ("Plumos") to represent her on a contingency basis in relation to a personal injury claim involving Brenden Theaters. Between on or about August 27, 1999 and on or about September 1, 1999, respondent conducted some preliminary investigation related to Plumos' claim. On or about September 1, 1999, respondent sent a letter to Brenden Theaters' insurance carrier regarding his representation of Plumos. Thereafter, respondent communicated with the adjuster and contacted Plumos' medical doctors. Settlement negotiations thereafter broke down. In respondent's professional opinion, Plumos had unrealistic expectations of the value of the personal injury claim. Respondent sought to convince Plumos of his view of the case but he was unsuccessful. Respondent took no further significant action on Plumos' behalf after on or about January 2000.

Between in or about September 1999 and in or about June 2000, Plumos telephoned respondent's office on several occasions, each time leaving a message requesting respondent to contact her regarding the status of her matter. Respondent received these messages and did not return any of these telephone calls.

On or about June 28, 2000, Plumos hired the law firm of Maurice Moyal – A Professional Law Corporation ("the Moyal firm") to represent her in relation to her claim against Brenden Theaters. Within the Moyal firm Plumos' matter was assigned to attorney Christina C. North ("North").

Shortly after June 28, 2000, North spoke with respondent by telephone. During this conversation North informed respondent that Plumos had discharged him in favor of the Moyal firm. North also requested respondent to forward Plumos' file to her, and respondent agreed to do so. Respondent did not forward Plumos' file to North, or anyone acting on Plumos' behalf, as promised.

On or about July 20, 2000, North caused a letter to be sent to respondent ("the July 20, 2000 letter") requesting respondent to forward Plumos' file to her. The July 20, 2000 letter also cautioned respondent that the statute of limitations on Plumos' claim against Brenden Theaters would run on August 12, 2000.

The July 20, 2000 letter was placed in a sealed envelope correctly addressed to respondent at his official address of record as maintained with the State Bar of California pursuant to Business and Professions Code, section 6002.1, and properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business.

The July 20, 2000 letter was not returned to North or the Moyal firm as undeliverable or for any other reason. Respondent did not forward Plumos' file to, or otherwise contact, North or anyone acting on Plumos' behalf, in response to the July 20, 2000 letter. On or about August 14, 2000, North caused another letter to be sent to respondent ("the August 14, 2000 letter") requesting him to forward Plumos' file to her. The August 14, 2000 letter was placed in a sealed envelope correctly addressed to respondent at his official address of record as maintained with the State Bar of California, pursuant to Business and Professions Code, section 6002.1, and properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The August 14, 2000 letter was not returned to North or the Moyal firm as undeliverable or for any other reason.

Respondent did not forward Plumos' file to, or otherwise contact, North or anyone else acting on Plumos' behalf, in response to the August 14, 2000 letter.

The Moyal firm continued to represent Plumos and was able to reach a resolution of her case.

On or about August 21, 2000, the State Bar of California ("State Bar") opened an investigation, case no. 00-O-14753, concerning respondent's representation of Plumos. On or about January 4, 2001, State Bar Investigator Roger Harding ("Harding") wrote a letter to respondent ("the January 4, 2001 letter") regarding case no. 00-O-14753. The January 4, 2001 letter was placed in a sealed envelope correctly addressed to respondent at his official address of record as maintained with the State Bar, pursuant to Business and Professions Code, section 6002.1. The January 4, 2001 letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the January 4, 2001 letter as undeliverable or for any other reason.

The January 4, 2001 letter requested that respondent respond in writing to specified allegations of misconduct under investigation by the State Bar.

Respondent did not contact Harding or any other employee, in writing or otherwise, in response to the January 4, 2001 letter.

On or about March 22, 2001 State Bar Investigator Michal Gilbert ("Gilbert") wrote another letter to respondent ("the March 22, 2001 letter") regarding case no. 00-O-14753. The March 22, 2001 letter was placed in a sealed envelope correctly addressed to respondent at his official address of record as maintained with the State Bar pursuant to Business and Professions Code, section 6002.1. The March 22, 2001 letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the March 22, 2001 letter as undeliverable or for any other reason. The March 22, 2001 letter requested that respondent respond in writing to specified allegations of misconduct under investigation by the State Bar. On or about April 5, 2001 respondent spoke with Gilbert by telephone. During this conversation respondent acknowledged receipt of the March 22, 2001 letter, and he told Gilbert that he would provide a response to the letter by facsimile transmission by the end of the day on April 6, 2001. Gilbert and respondent did not engage in a substantive discussion of the allegations under investigation in case no. 00-O-14753 during their telephone conversation on or about April 5, 2001. Respondent did not respond to the March 22, 2001 letter as promised in his conversation with Gilbert, the allegations investigated in case no. 00-O-14753.

Conclusions of Law

The level of intent is as specified in *Durbin*, as in having a general purpose or willingness to commit the act or permit the omission (*Durbin v. State Bar* (1979) 23 Cal.3d 461, 467).

1. By failing to take any significant action on Plumos' behalf after on or about September 1, 1999, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).
2. By failing to contact Plumos in response to her telephone messages, respondent failed to respond promptly to the reasonable status inquiries of a client, in violation of Business and Professions Code, section 6068(m).
3. By failing to release Plumos' file as requested on multiple occasions and as promised, respondent failed to promptly release a client file as requested upon termination of employment, in violation of Rules of Professional Conduct, rule 3-700(D)(1).
4. By not providing a substantive response to the January 4, 2001 letter and the March 22, 2001 letter, or otherwise communicating in a substantive fashion with a State Bar employee

regarding case no. 00-O-14753, respondent failed to cooperate and participate in a State Bar disciplinary investigation, in violation of Business and Professions Code, section 6068(m).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was February 25, 2003.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 25, 2003 the estimated prosecution costs in this matter are approximately \$3,698.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

Each party will submit authorities supporting discipline in their letter brief addressing level of discipline, filed separately.

AGGRAVATING CIRCUMSTANCES.

Standard 1.2(b)(ii) - multiple acts of misconduct
Standard 1.2(b)(iv) - significant harm

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Respondent had committed misconduct with respect to three separate client matters: Plumas, Loi, and Dillon, demonstrating a pattern of misconduct.

Respondent's misconduct caused significant harm. Dillon has mostly likely lost the ability to pursue his suit as it has been over five years since it was filed. Weeks has been deprived of approximately \$6,000 in settlement funds that are either due and payable to her or lien holders on her case.

MITIGATING CIRCUMSTANCES.

Standard 1.2(b)(vii) - steps taken to remedy misconduct

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

Subsequent to the commencement of State Bar proceedings in this case, respondent has been cooperative and taken steps with each client to remedy his misconduct. Respondent has returned files to Loi and Dillon and is seeking to negotiate a resolution of the medical lien and or repayment to Weeks.

ADDITIONAL MITIGATING CIRCUMSTANCES.

Respondent is participating in the Lawyer's Assistance Program.

Respondent was admitted in 1982 and has no prior misconduct, although the current misconduct is deemed serious.

With respect to the Loi matter, respondent has resumed representation of Loi in this matter, offering services at no cost to the client, and has taken action to repair his relations with this client.

STATE BAR ETHICS SCHOOL.

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES.

Participation in State Bar Lawyer's Assistance Program.

On 1/13/03, Respondent voluntarily entered into a participation agreement with the LAP ("the participation agreement"), which includes conditions regarding substance abuse testing, monitoring and treatment for five (5) years. Respondent shall comply with the terms of the participation agreement, as the participation agreement may be modified by Respondent and the LAP from time to

time, and shall furnish satisfactory evidence of such compliance to the Probation Unit. Respondent shall include in each quarterly report required herein satisfactory evidence of all such compliance made by her during that reporting period.

FINANCIAL CONDITIONS, RESTITUTION.

Respondent agrees to pay client Alicia Weeks the sum of \$7,200 pursuant to the terms of the attached "Settlement Agreement." These payments are to be made in three installments of no less than the amounts, to be made on the following schedule:

<u>Date</u>	<u>Amount</u>
March 17, 2003	\$2,500
April 16, 2003	\$2,350
May 16, 2003	\$2,350

Total: \$7,200

Respondent will furnish satisfactory evidence of restitution to the Probation Unit. Respondent shall include in each quarterly report required herein satisfactory evidence of all restitution payments made by him or her during that reporting period.

Neither this Stipulation, nor participation in the Attorney Diversion and Assistance Program precludes or stays the independent review and payment of applications for reimbursement filed against the Respondent pursuant to the Rules of Procedure, Client Security Fund Matters.

Respondent admits that the following facts are true and that he/she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

SETTLEMENT AGREEMENT

ALICIA WEEKS of 2343 26th Avenue, San Francisco, California 94116, (hereinafter referred to as "WEEKS"), and JEFFREY A. BERGER, ESQ., 22 Battery Street, Suite 610, San Francisco, California 94111, (hereinafter referred to as "BERGER") make this agreement in consideration of the promises set out herein.

1. BERGER represented WEEKS as her attorney in a lawsuit maintained against CAESAR CHAVEZ STUDENT UNION at San Francisco State University to recover damages for personal injuries sustained by WEEKS in 1995. In October, 1998, a settlement was arrived at between the parties and the settlement amount of \$30,000.00 was paid to BERGER and the litigation terminated. After paying to himself the agreed upon fee for his services and payment of a portion of the balance to WEEKS, BERGER withheld an amount which was more than sufficient to pay an outstanding medical bill. None of that withheld amount has to date been paid to WEEKS or to the medical provider or its assignee, CHASE RECEIVABLES (hereinafter referred to as "CHASE") and WEEKS and BERGER have had differences as to the amount owed by BERGER to WEEKS in these circumstances.

2. It is agreed that BERGER will pay to WEEKS the sum of SEVEN THOUSAND, TWO HUNDRED DOLLARS (\$7,200.00) in settlement of this matter. That amount is to be paid in 3 installments, as follows:

Initial installment of TWO THOUSAND, FIVE HUNDRED DOLLARS (\$2,500.00) shall be paid on or before March 17, 2003.	\$2,500.00
Second installment of TWO THOUSAND, THREE HUNDRED FIFTY DOLLARS (\$2,350.00) shall be paid on or before April 16, 2003.	2,350.00
Third installment of TWO THOUSAND, THREE HUNDRED FIFTY DOLLARS (\$2,350.00) shall be paid on or before May 16, 2003.	<u>2,350.00</u>
	\$7,200.00
	=====

BERGER will execute a promissory note in favor of WEEKS which will reflect the import of this agreement. Both parties hereto intend that the terms of the promissory note and this agreement will be fulfilled by May 16, 2003. However, if any amount of the said \$7,200.00 shall remain unpaid after that date, then interest at the rate of TEN PERCENT (10%) per annum shall begin to accrue on the unpaid amount as of May 17, 2003, and shall continue until the said amount has been paid in full. After May 16, 2003, any payments made by BERGER shall be credited first to accrued interest and then to principal remaining.

3. BERGER will assume the obligation to CHASE for the unpaid medical bill, the amount of which is believed to be approximately THREE THOUSAND, THREE HUNDRED NINETY-TWO DOLLARS (\$3,392.00). If any portion of said amount is not paid over to CHASE, BERGER will remit the retained amount, being the difference between \$3,392.00 and the amount actually paid by him to CHASE, to WEEKS. In any case, BERGER agrees to furnish to WEEKS full documentation as to the amount paid to CHASE, including copies of cancelled checks, receipts, and any other evidence of his payment to CHASE.

4. On May 16, 2003, or on such other date as the promises made by BERGER in this agreement have been performed and fulfilled in their entirety, WEEKS will return to BERGER the promissory note marked "Paid in Full" and execute a release of her claim, as appropriate.

5. This agreement shall be binding on the heirs, beneficiaries, successors and assigns of the parties hereto.

6. This agreement is executed in duplicate originals with one original to be retained by each party.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on _____, 2003.

ALICIA WEEKS

JEFFREY A. BERGER, ESQ.

PROMISSORY NOTE

_____, 2003

\$7,200.00

This note is made in conjunction with and as security for the "Settlement Agreement" of even date herewith between JEFFREY A. BERGER and ALICIA WEEKS.

I, JEFFREY A. BERGER, promise to pay to ALICIA WEEKS the sum of SEVEN THOUSAND, TWO HUNDRED DOLLARS (\$7,200.00 U.S. dollars) in three installments, as follows:

- | | |
|--|-----------------|
| 1. Initial installment of TWO THOUSAND, FIVE HUNDRED DOLLARS on or before March 17, 2003 | \$2,500.00 |
| 2. Second installment of TWO THOUSAND, THREE HUNDRED FIFTY DOLLARS on or before April 16, 2003 | 2,350.00 |
| 3. Third installment of TWO THOUSAND, THREE HUNDRED FIFTY DOLLARS on or before May 16, 2003 | <u>2,350.00</u> |
| | \$7,200.00 |

I promise to abide by the above schedule. However, if any part of the principal amount should not have been paid by May 16, 2003, interest at the rate of TEN PERCENT (10%) per annum shall begin to accrue on the unpaid amount as of May 17, 2003, and shall continue until the said amount has been paid in full. After May 16, 2003, any payments shall be credited first to accrued interest and then to principal remaining.

All payments are to be sent by prepaid first class mail, or by a secure express method, to ALICIA WEEKS at 2343 - 26th Avenue, San Francisco, California 94116.

This note and its terms shall be binding on the heirs, beneficiaries, successors and assigns of the parties hereto.

JEFFREY A. BERGER

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; 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 San Francisco, on September 14, 2006, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING DOCUMENTS

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING**

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

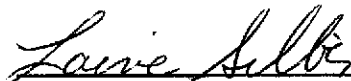
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**JEFFREY ALAN BERGER
LAW OFC JEFFREY A BERGER
22 BATTERY ST #610
SAN FRANCISCO CA 94111**

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

CYDNEY BATCHELOR, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 14, 2006.



Laine Silber
Case Administrator
State Bar Court