

Hearing Department Los Angeles Counsel For The State Bar Case Number (s) (for Court's use) 03-O-03126-DFM Kevin B. Taylor, DTC State Bar of California 1149 S. Hill Street Los Angeles, CA 90015-2299 AUG 14 2007 (213) 765-1630 STATE BAR COURT CLERK'S OFFICE Bar # 151715 LOS ANGELES Counsel For Respondent PUBLIC MATTER David A. Clare, Esq. Attorney at Law 444 W. Ocean Blvd., #800 Long Beach, CA 90802 (562) 624-2837 Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND Bar # 44971

DISPOSITION AND ORDER APPROVING

☐ PREVIOUS STIPULATION REJECTED

STAYED SUSPENSION; NO ACTUAL SUSPENSION

State Bar Court of California

Bar # 57703

In the Matter Of:

(323) 953-8996

Arthur L. Margolis, Esq. Margolis & Margolis, LLP

2000 Riverside Drive Los Angeles, CA 90039

Paul E. Fisher

Bar # 125309

A Member of the State Bar of California

(Respondent)

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 11, 1986.
- (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.

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	(Do not write above this line.)					
(3)	All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 11 pages, not including the order.					
(4)	A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."					
(5)	Cor Lav	Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".				
(6)			es must include supporting authority for the recommended level of discipline under the heading ing Authority."			
(7)			than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any investigation/proceeding not resolved by this stipulation, except for criminal investigations.			
(8)			of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & Check one option only):			
		co: cy (ha co:	sts added to membership fee for calendar year following effective date of discipline. sts to be paid in equal amounts prior to February 1 for the following membership years: two (2) billing cles following the effective date of the Supreme Court Order. rdship, special circumstances or other good cause per rule 284, Rules of Procedure) sts waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs" sts entirely waived			
F	rofe		ting Circumstances [for definition, see Standards for Attorney Sanctions for onal Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances red.			
F	rofe	essio equi	onal Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances			
F	rofe	essio equi	onal Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances red.			
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F	rofere r (a) (b)	essio equi	onal Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances red. r record of discipline [see standard 1.2(f)] State Bar Court case # of prior case Date prior discipline effective			
F	(a) (b) (c)	essio equi	onal Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances red. r record of discipline [see standard 1.2(f)] State Bar Court case # of prior case Date prior discipline effective Rules of Professional Conduct/ State Bar Act violations:			
F	(a) (b) (c) (d)	Prio	conal Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances red. r record of discipline [see standard 1.2(f)] State Bar Court case # of prior case Date prior discipline effective Rules of Professional Conduct/ State Bar Act violations: Degree of prior discipline If Respondent has two or more incidents of prior discipline, use space provided below or a separate			
(1)	(a) (b) (c) (d)	Prio Dish conc	conal Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances red. r record of discipline [see standard 1.2(f)] State Bar Court case # of prior case Date prior discipline effective Rules of Professional Conduct/ State Bar Act violations: Degree of prior discipline If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline. onesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, ealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct. It Violation: Trust funds or property were involved and Respondent refused or was unable to account a client or person who was the object of the misconduct for improper conduct toward said funds or			

(Do no	t write	above this line.)
(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 victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
(7)		Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
(8)	\boxtimes	No aggravating circumstances are involved.
		ating Circumstances [see standard 1.2(e)]. Facts supporting mitigating
	_	mstances 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 with 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 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 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 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 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.

(Do no	ot write	e abov	e this lin	ne.)		
(12)		Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.				
(13)		Noı	nitiga	ting circumstances are involved.		
Addi	ition	al mit	igatin	g circumstances		
		•		as no record of discipline since being admitted to the practice of law in California on 1986.		
	froi Cel	n Gu iac S	nders pruce	explained that about the time he filed the motion for new trial and agreed to accept loans on (see Facts and Conclusions of Law section of this document) he was suffering from , a medical condition which reduced his daily energy and ability to concentrate. o longer suffers from this medical condition.		
	Res	spon	dent a	cted with candor and in good faith regarding his acceptance of loans from Gunderson.		
D. I	Disc	iplir	ie:			
(1)	\boxtimes	Stay	∕ed Sι	uspension:		
	(a)	\boxtimes	Resp	pondent must be suspended from the practice of law for a period of six (6) months.		
		l.		and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.		
		ii,		and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.		
		iii.		and until Respondent does the following:		
	The	abov	/e-refe	erenced suspension is stayed.		
(2)	\boxtimes	Prol	bation	:		
				placed on probation for a period of one (1) year , which will commence upon the effective date of ourt order in this matter. (See rule 9.18 California Rules of Court)		
E. A	\ddi	tiona	al Co	nditions of Probation:		
(1)	\boxtimes	During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.				
(2)	\boxtimes	State	e Bar a	(10) days of any change, Respondent must report to the Membership Records Office of the and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of n, including current office address and telephone number, or other address for State Bar as prescribed by section 6002.1 of the Business and Professions Code.		
(3)	Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.					

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(4)		July wheth cond are a curre	10, and October 10 of the period of probation ther Respondent has complied with the State litions of probation during the preceding cale any proceedings pending against him or her i	n. Un Bar ndar in the t wou	ne Office of Probation on each January 10, April 10, der penalty of perjury, Respondent must state Act, the Rules of Professional Conduct, and all quarter. Respondent must also state whether there State Bar Court and if so, the case number and ald cover less than 30 days, that report must be ended period.	
					ning the same information, is due no earlier than obation and no later than the last day of probation.	
(5)		cond Durin in ad	litions of probation with the probation monitoring the period of probation, Respondent must	r to e furni	espondent must promptly review the terms and stablish a manner and schedule of compliance. sh to the monitor such reports as may be requested, eitted to the Office of Probation. Respondent must	
(6)		inqui direc		ition r	ent must answer fully, promptly and truthfully any monitor assigned under these conditions which are g to whether Respondent is complying or has	
(7)	\boxtimes	Prob			ne herein, Respondent must provide to the Office of in of the State Bar Ethics School, and passage of the	
			No Ethics School recommended. Reason:			
(8)		must	Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.			
(9)		The	following conditions are attached hereto and	inco	porated:	
			Substance Abuse Conditions [Law Office Management Conditions	
			Medical Conditions		Financial Conditions	
F. C)the	r Cor	nditions Negotiated by the Parties:			
(1)		the Cor res Rul	Multistate Professional Responsibility Exam inference of Bar Examiners, to the Office of P	inatio Probat hear	tion within one year. Failure to pass the MPRE ing until passage. But see rule 9.10(b), California	

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: PAUL E. FISHER, State Bar No. 125309

CASE NUMBER: 03-O-03126-DFM

FACTS AND CONCLUSIONS OF LAW

Respondent was admitted to the practice of law in the State of California on December 11, 1986.

At all times relevant to this stipulation of facts and conclusions of law, Jon M. Gunderson (Gunderson) was President and chief operating officer of Outdoor Media Group, Inc. (OMG), a business involved in billboards and outdoor advertising. OMG was a family held corporation in which Gunderson owned a 40% interest.

From 1991 to March 2002, Respondent represented Gunderson individually and OMG in various litigation and business matters.

At all relevant times, Respondent was attorney of record for OMG in an action pending in Riverside County Superior Court entitled *City of Riverside v. Outdoor Media Group, Inc., et al., and related cross-actions,* case no. 253655 (Riverside v. OMG).

In Riverside v. OMG, the City of Riverside (City) sought a permanent injunction requiring OMG to dismantle a billboard that it had constructed in 1988 without applying for a permit. OMG alleged that the city ordinances that prohibited the billboard were unconstitutional. After a bench trial, the first trial in the matter, the court found that the city ordinance was constitutional and that OMG had failed to apply for a permit for the billboard. Therefore, the court issued the permanent injunction and required OMG to dismantle the sign.

Thereafter, OMG filed an appeal in the Court of Appeal of the State of California, Fourth Appellate District, Division Two, arguing that the city ordinance was unconstitutional. The Court of Appeal affirmed the lower court's judgment in part, but reversed with respect to the portion of that judgment which upheld the constitutionality of a section of the ordinance which purported to ban all signs of a certain category. As a consequence, the case was remanded to the trial court for a second trial.

On October 15, 2001, after the second trial was held, the trial court again issued the injunction and required OMG to dismantle the billboard.

In response to the trial court's ruling, on November 13, 2001, OMG filed a Notice of Intent to Move for New Trial.

On November 29, 2001, Respondent signed and caused to be filed with the trial court a Memorandum of Points and Authorities in Support of Motion for a New Trial and Declaration of Paul Fisher (collectively referred to as "motion for new trial"). In this pleading, Respondent alleged that a new trial was warranted based upon, inter alia, the existence of newly discovered material evidence.

The motion for new trial lacked merit.

The motion for new trial argued that Respondent had discovered an application for a zoning change pertaining to the billboard at issue which constituted "newly discovered evidence".

On December 21, 2001, the trial court denied OMG's motion for new trial on various grounds, including the finding that the motion lacked merit for the following reason:

The subject application for a zoning change did not constitute "newly discovered evidence", nor was it newly discovered, for purposes of supporting a motion for new trial. Respondent himself had prepared the application for zoning change and filed it with the City on behalf of OMG in 1997. Additionally, Respondent and OMG offered the application as an exhibit at the first trial in Riverside v. OMG. As such, the application clearly did not meet the definition of "newly discovered evidence" for purposes of a motion for new trial.

From mid-March 2002 through June 2002, Respondent did not represent Gunderson or OMG in any legal matters.

From July 2002 to May 2003, Respondent again represented Gunderson individually and OMG in various litigation and business matters.

In or about July 2002, Gunderson agreed to assist Respondent by loaning Respondent an undetermined amount of money based upon Respondent's needs. Thereafter, Gunderson loaned Respondent the following amounts of money on the following dates:

July 29, 2002	\$15,000
September 4, 2002	\$12,000
September 10, 2002	\$15,000
December 10, 2002	\$25,400
December 19, 2002	\$10,000
Total amount loaned	\$77,400

Gunderson made the above referenced loans to Respondent for Respondent's personal use and benefit. At the time Gunderson loaned Respondent the above referenced funds, Gunderson and Respondent had a long-standing personal and professional relationship.

As part of the loan agreement between Gunderson and Respondent, Respondent was allowed to repay Gunderson a portion of the loan amount by providing legal services to Gunderson and OMG.

In a letter dated July 26, 2002, Respondent advised Gunderson of the existence and language of Rule 3-300 of the Rules of Professional Conduct. The letter also specifically advised Gunderson to consult with another attorney regarding the loans he had agreed to make to Respondent.

However, prior to accepting the loans, Respondent did not reduce the terms of the transaction to a written contract, and therefore, failed to disclose the terms of the transaction in writing to Gunderson in a manner which should reasonably have been understood by him. Prior to accepting the loans, Respondent did not obtain Gunderson's written consent to the terms of the loans.

Additionally, at the time that the loans were made, the terms of the loans did not require Respondent to provide any security to Gunderson to ensure repayment of the loans and Respondent did not provide any security to Gunderson. Therefore, the terms of the loans were unfair and unreasonable.

On March 31, 2003, Respondent signed a promissory note in the amount of \$65,900 for the \$77,400 that Gunderson had loaned to him. The promissory note was in the amount of \$65,900, rather than \$77,400, because Respondent received a credit of \$11,500 for legal services he had provided to Gunderson and/or OMG. The promissory note provided that Respondent was to pay Gunderson \$65,900 no later than June 21, 2003, or interest of 10% per annum, compounded daily, would begin to accrue on the date of maturity until paid in full.

Respondent did not pay Gunderson any portion of the \$65,900 by June 21, 2003. Respondent contends that he did not pay any portion of the \$65,900 by June 21, 2003 because he had not yet overcome the financial effects of his having suffered from Celiac Spruce syndrome.

In July 2003, Gunderson initiated legal action to collect on Respondent's promissory note. Thereafter, Respondent entered into a settlement agreement with Gunderson whereby Respondent agreed to pay Gunderson \$70,691 in satisfaction of the remaining \$65,600 principal debt. Respondent paid Gunderson that amount in 2003.

Legal Conclusions

By filing the motion for new trial which lacked merit, Respondent continued employment when he knew or was grossly negligent in not knowing that the objective of such employment was to present a claim in litigation that was not warranted under existing law, in wilful violation of rule 3-200(B), Rules of Professional Conduct.

By accepting personal loans from Gunderson where (1) the terms of same lacked security and were, therefore, not fair and reasonable to the client; (2) all of the terms of the loans were not fully disclosed to Gunderson in writing; and (3) Gunderson did not consent to same in writing, at or about the time the loans were made, Respondent improperly entered into a business transaction with a client, in wilful violation of Rule 3-300 of the Rules of Professional Conduct.

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties waive any variance between the Notice of Disciplinary Charges filed on February 28, 2007, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

DISMISSALS

The parties respectfully request that the Court dismiss the following alleged violations in the interest of justice:

Case No.	<u>Count</u>	Alleged Violation
03-O-03126	TWO	B&P 6106
	THREE	RPC 3-200(B)
	FOUR	B&P 6106

PENDING PROCEEDINGS

The disclosure date referred to, on page one, paragraph A.(7), was July 24, 2007.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of July 24, 2007, the rough estimate of disciplinary costs to be assessed in this matter is \$3,654.

DISCUSSION RE STIPULATED DISCIPLINE

Standard 1.3 of the *Standards For Attorney Sanctions For Professional Misconduct* provides that the primary purpose of discipline is the protection of the public, the courts and legal profession; maintenance of high professional standards; and the preservation of public confidence in the legal profession.

Standard 2.8 provides that culpability of a member of a wilful violation of rule 3-300, Rules of Professional Conduct, shall result in suspension unless the extent of the member's misconduct and harm to the client are minimal, in which case, the degree of discipline shall be reproval.

The parties submit that relevant case law supporting actual suspension for violations of rule 3-300 generally includes acts of deceit on the part of the respondent (see *Beery v. State Bar* (1987) 43 Cal.3d 802 and *In the Matter of Peavey* (Rev. Dept. 2002) 4 Cal. State Bar Ct. Rptr 483) or a respondent making investment decisions for unsophisticated clients regarding their settlement proceeds (see *Hunniecutt v. State Bar* (1988) 44 Cal.3d 362). Such circumstances are not present in this matter.

In this matter, Respondent accepted a personal loan from Gunderson. There was no deceit as to why the loan was being made or what the loan proceeds were to be used for.

Standard 2.10 provides that culpability of a member of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproval or suspension according to the gravity of the offense or harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Standard 2.10 applies to violations of rule 3-200(B).

The parties submit that the intent and goals of Standard 1.3 are met in this matter by the imposition of a stayed suspension with those probationary conditions articulated herein, including that Respondent attend the State Bar Ethics School and that he pass the Multistate Professional Responsibility Examination.

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each of t	the recita	s below, the parties tions and each of th	NATURE OF THE PARTIES and their counsel, as applic te terms and concitions of th	cable, signify their agreemer	nt with
Date	30/0	aw and Disposition. Respondent a Si		Paul E. Fisher Print Name	
7/30 Date	107	Respondent's C		David A. Clare Print Name	<u>,</u>
8/ Date		Deputy Trial Co.		Cevin B. Taylor Print Nama	

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In the Matter of Paul E, Fisher	Case number(s): 03-0-03126-0FM
Bar # 125309	000000000000000000000000000000000000000

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 Fact, Conclusions of Law and Disposition.

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Date	7,8	12/24
7/3	1/07	2/07
Date	,	
/		

7/31/47

7/3//07 Dave Respondent's Signature

Respondent's Counsel Stanature

Deputy Trial Courser's Signature

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Respondent's Course (Eignature)

Paul E. Fisher
Print Name

David A. Clare
Print Name

Kevin B. Taylor Print Name

Arthur L. Margolis Print Name 07/31/2007 09:59 FAX 0//30/2007 21:51

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ĺ	Paul E, Fisher	03-O-03126-DFM
1	Bar # 125309	
1		

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 Fact, Conclusions of Law and Disposition.

7/31/07	Part Lashor	Paul E, Fisher
Date 🥛 📜	Respondent's Signature	Print Name
7/31/07		David A. Clare
Date	Respondent's Counsel Signature	Print Name
7/31/07	Im B 3/	Keyin 9, Taylor
Date	Deputy Trial Counser's Signature	Print Name
7/31/07	taller L. Wargelis	Arthur L. Margolis
Dat/e	Respondent's Counsel Gignature	Print Name

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3.00 99	OR	DER	
_	ERED that the requested dismissal o	nd that it adequately protects the public, f counts/charges, if any, is GRANTED without	
Ä	The stipulated facts and disposition RECOMMENDED to the Supreme Commonwealth of the Su	are APPROVED and the DISCIPLINE Court.	
		are APPROVED AS MODIFIED as set forth COMMENDED to the Supreme Court.	
	All Hearing dates are vacated.		
		•	
the stipula or further r effective (ition, filed within 15 days after service modifies the approved stipulation. (Se	roved unless: 1) a motion to withdraw or modify of this order, is granted; or 2) this court modifies e rule 135(b), Rules of Procedure.) The live date of the Supreme Court order herein, 8(a), California Rules of Court.)	
Date 8/	8/07	Judge of the State Bar Court	

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 Los Angeles, on August 14, 2007, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION

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

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

ARTHUR LEWIS MARGOLIS
MARGOLIS & MARGOLIS
DAVID A CLARE, ATTORNEY AT LAW
2000 RIVERSIDE DR
444 W OCEAN BLVD #800
LOS ANGELES, CA 90039
LONG BEACH, CA 90802

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

KEVIN B. TAYLOR, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 14, 2007.

Tammy R. Cleaver Case Administrator State Bar Court