

ORIGINAL

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**State Bar Court of California
Hearing Department
San Francisco**

<p>Counsel For The State Bar</p> <p>Manuel Jimenez Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 Telephone: (415) 538-2288 Facsimile: (415) 538-2284</p> <p>Bar # 218234</p>	<p>Case Number (s) 04-O-14621</p>	<p>(for Court's use)</p> <p>FILED <i>MDS</i></p> <p>MAY - 9 2007</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Lindsay K. Slatter Fishkin & Slatter 1111 Civic Drive, Suite 215 Walnut Creek, CA 94596 Telephone: (925) 944-5600 Facsimile: (925) 944-5432</p> <p>Bar # 72692</p>	<p>PUBLIC MATTER</p> <p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: Steven L. Weiner</p> <p>Bar # 87553</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 **October 29, 1979**.
- (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 **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) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



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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):
- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - costs to be paid in equal amounts prior to February 1 for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived

B. Aggravating Circumstances [for definition, see 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 **94-O-15115**
 - (b) Date prior discipline effective **March 27, 1997**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Rule 4-100(A), Rules of Professional Conduct**
 - (d) Degree of prior discipline **Private Reproval**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (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 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.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

Actual Suspension

- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 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 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. **During the relevant time period, respondent suffered extreme emotional difficulties when his son, developed a serious emotional problem while a student at the University of Arizona (September, 2002 through December, 2004). During this time period, his son was arrested twice, and made two serious attempts at suicide. The stress from dealing with his son's psychological and legal problems effected respondent's law practice. Respondent had to fly to Arizona frequently, and spend many hours communicating with his son. His son's psychological problems worsened when two of his son's close friends died. This resulted in the respondent having to bring his son home. The emotional stress of having a self-destructive young adult child was enormous and all-encompassing.**
- (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.

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(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

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **two (2) years**.

i. 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:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of **three (3) years**, 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 **six (6) months**.

i. 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:

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 learning and ability in general law, pursuant to standard 1.4(c)(ii), 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: .
- (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:
 - Substance Abuse Conditions
 - Law Office Management Conditions (per F.(5) below)
 - Medical Conditions
 - 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 321(a)(1) & (c), 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:** Respondent, within six months of the effective date of discipline, must attend six hours of Continuing Legal Education (in addition to ethics school and CTA school) that pertains to law office management and/or trust account management. Respondent must retain the services of a professional qualified to handle his law office financial matters, or become proficient in those matters.

Attachment language begins here (if any):

Respondent twice violating Rules of Professional Conduct, rule 4-100(A), by failing to maintain the balance of funds received for the benefit of a client and depositing said funds in a bank account labeled "Trust Account," "Clients Funds Account," or words of similar import, and by depositing and commingling funds belonging to the respondent in a bank account labeled "Trust Account," "Clients Funds Account," or words of similar import.

Steven L. Weiner ("respondent") was admitted to the practice of law in the State of California on October 29, 1979, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

At all times herein, respondent maintained a client trust account at Scott Valley Bank (Account No. 94004158; hereinafter, "the trust account").

In or about October 2001, respondent was employed by Charles Rider ("Rider") to represent him in matters arising from an auto accident, including an uninsured motorist claim against Rider's own insurance carrier. Respondent settled the matter, and between May 2002 and May 2003 received three settlement checks totaling \$75,000.00. These funds were deposited in respondent's trust account.

During the course of settlement discussions, a dispute had arisen over payment to one of Rider's medical providers, who claimed a contractual right to reimbursement. In or around March 2002, Rider instructed respondent to keep any settlement funds in trust and not to disburse them without his written permission.

The final payment in settlement of the case was made on or about December 31, 2004. After deductions for attorney fees and costs, the disputed funds to be retained by respondent on behalf of Rider totaled \$31,620.47.

Prior to the final payout of the disputed funds, the balance in respondent's trust account dropped below \$31,620.47 during the following periods:

<u>Duration</u>	<u>Balance</u>
7/25/03 - 7/31/03	\$30,699.21 - \$6,199.00
9/3/03 - 9/15/03	\$31,197.58 - \$19,264.58
9/30/03	\$29,940.69
10/6/03 - 10/16/03	\$27,654.79 - \$11,869.63
10/22/03 - 11/5/03	\$29,438.34 - \$30,837.29
11/6/03 - 11/7/03	\$31,161.29 - \$22,241.69

In 2004, the balance in respondent's trust account dropped below \$31,620.47 during the following periods:

<u>Duration</u>	<u>Balance</u>
1/5/04 - 1/8/04	\$19,139.03 - \$17,671.03
1/14/04	\$29,577.16
1/20/04 - 1/25/04	\$24,767.16 - \$17,717.16
1/28/04 - 2/02/04	\$17,896.76 - \$25,221.76
2/2/04 - 2/12/04	\$22,704.53 - \$4,717.74
2/18/04 - 2/19/04	\$25,817.74 - \$27,068.30
3/23/04 - 3/24/04	\$30,712.74 - \$27,962.74

4/9/04 - 4/12/04 \$23,837.23 - \$22,722.44

By not maintaining at least \$31,620.47 received on behalf of the client in the trust account, respondent failed to maintain client funds in a trust account.

Between May 2003 and February 2004, respondent repeatedly deposited non-client funds into the trust account, thereby commingling these funds in the trust account, as follows:

<u>Date</u>	<u>Amount</u>	<u>Source</u>	<u>Payee</u>
5/5/03	\$195,344.78	cashier's check	respondent
7/22/03	\$50,000.00	cashier's check	respondent
8/1/03	\$65,000.00	cashier's check	respondent
8/21/03	\$37,000.00	cashier's check	respondent
9/19/03	\$25,000.00	cashier's check	respondent
11/5/03	\$193.92	State Farm Life Ins.	Katherine Weiner

<u>Date</u>	<u>Amount</u>	<u>Source</u>	<u>Payee</u>
11/5/03	\$4000.00	State Farm Life Ins.	Katherine Weiner
11/5/03	\$4000.00	State Farm Life Ins.	Katherine Weiner
11/5/03	\$4000.00	State Farm Life Ins.	Katherine Weiner
12/31/03	\$50,000.00	cashier's check	respondent

By depositing personal funds into the trust account, respondent commingled funds belonging to respondent in a client trust account.

Dismissals

Count 3 Business and Professions Code section 6106 Moral Turpitude

Authorities Supporting Discipline

The Relevant Standards

The standards state, in part:

Standard 2.2(a): "Culpability of a member of willful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than one-year actual suspension, irrespective of mitigating circumstances.

Standard 2.2(b): "Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the willful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances."

Case Law

The standards are entitled to great weight. [*In re Silvertown* (2005) 36 Cal.4th 81 (citing *In re Brown* (1995) 12 Cal.4th 205, 220)]

Despite the need to examine cases on an individual basis to determine appropriate discipline, it is also a goal of disciplinary proceedings that there be consistent recommendations as to discipline, a goal that has been achieved in large measure through the application of the Standards for Attorney Sanctions for Professional Misconduct. [*In the Matter of Marsh* Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96]

The Supreme Court has instructed the State Bar Court to use the Standards for Attorney Sanctions for Professional Misconduct as guidelines in determining discipline. [*In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1]

An attorney's fiduciary duty to develop and maintain adequate management and accounting procedures for proper operation of his law office is fundamental to fulfillment of multiple duties, including duties to competently perform legal services, adequately communicate with clients, protect client confidential information, and properly handle and account for client funds and other property. [*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498]

A respondent was disbarred for his misconduct in four matters where he commingled and misappropriated funds, and failed to perform services for two clients. In aggravation, the respondent was unrepentant. He refused to make restitution to some of his victims and for those to whom he did make restitution, he was afforded little credit for mitigation since the restitution was paid after being informed about State Bar complaints. [*Fitzpatrick v. State Bar* (1977) 20 Cal.3d 73]

In *Athearn v. State Bar* (1977) 20 Cal.3d 232, a respondent, who converted funds held in his trust account on behalf of a client to his own use was actually suspended for one year. In mitigation, the court found that the respondent had no prior record of discipline, had made full restitution, cooperated with the State Bar, and presented evidence of domestic and family difficulties. The Court stated, "Misappropriation of client funds warrants disbarment in the absence of extenuating circumstances. While petitioner's restitution of the misappropriated money is a factor in mitigation, it cannot be urged as a defense in a disciplinary proceeding. The board's recommendation of one year's suspension rather than disbarment demonstrates its consideration of mitigating circumstances, consisting of petitioner's restitution, domestic and family difficulties, cooperation, and the delay, if any, attributable to the State Bar." *Athearn*. 20 Cal.3d at 237.

In *Boehme v. State Bar* (1988) 48 Cal.3d 621, a respondent with no prior discipline in twenty-two years of practice, received a three year suspension, stayed, one year actual, after he received a settlement check for \$5,000 on behalf of a client, wrote a check to his client for the settlement amount (which bounced), deposited the settlement check in his general account, and waited thirteen months to make restitution. In mitigation, the findings note Boehme has never before had any complaints or disciplinary proceedings

against him in his 22 years of practice preceding the charged conduct. Two members of the State Bar testified that Boehme was an upstanding member of the bar and enjoys a good reputation among his colleagues, and respondent experienced a life-threatening medical emergency, which caused him serious health problems. At times he was totally incapacitated and at other times seriously restricted in his ability to devote full time to the practice of law.

In *Snyder v. State Bar* (1990) 49 Cal.3d 1302, a respondent with no prior discipline (in four years of practice - no mitigation for lack of prior), was suspended for five years, stayed, two years actual, for misappropriating \$3,496, when, while facing marital difficulties and fearing that his wife might attempt to freeze the assets in his client trust account, withdrew the account monies and placed them in his refrigerator. The money was accidentally thrown away as trash. In mitigation, respondent suffered an emotional breakdown after his wife deserted him and left him with sole care of their eleven year old daughter and his voluntary cessation of practice for three years while recovering from his emotional problems were mitigation.

F(5) Other Conditions Negotiated by Parties:


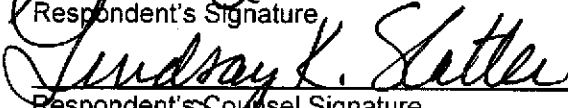

The Respondent must attend both the Ethics School and the Client Trust Account course, administered by the State Bar within six months of the effective date of this discipline. Respondent, within six months of the effective date of discipline, must attend six hours of Continuing Legal Education in addition to ethics school and CTA school that pertains to law office management and/or trust account management. Respondent must provide proof to the Office of Probation of his completion of said MCLE. Respondent must retain the services of a professional qualified to handle his law office financial matters, or become proficient in those matters.

(Do not write above this line.)

In the Matter of Steven L. Weiner	Case number(s): 04-O-14621
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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 Fact, Conclusions of Law and Disposition.

<u>4-17-07</u> Date	 Respondent's Signature	<u>Steven L. Weiner</u> Print Name
<u>4-16-07</u> Date	 Respondent's Counsel Signature	<u>Lindsay K. Slatter</u> Print Name
<u>4-20-07</u> Date	 Deputy Trial Counsel's Signature	<u>Manuel Jimenez</u> Print Name

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In the Matter Of Steven L. Weiner	Case Number(s): 04-0-14621
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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.

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 135(b), 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.)**

Date April 26, 2007 _____ Pat McElroy
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 May 9, 2007, 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:

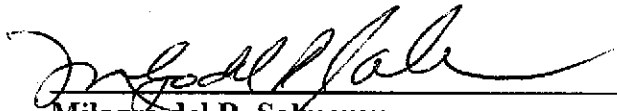
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**LINDSAY KOHUT SLATTER
FISHKIN & SLATTER LLP
1111 CIVIC DR STE 215
WALNUT CREEK, CA 94596**

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

Manuel Jimenez, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **May 9, 2007**.



Milagro del R. Salmeron
Case Administrator
State Bar Court