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CONFIDENTIAL

State Bar Court of California
Hearing Department
Los Angeles

PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES

<p>Counsel For The State Bar</p> <p>DAVID T. SAUBER Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 (213) 765-1252</p> <p>Bar # 176554</p>	<p>Case Number (s) 05-O-00236; 05-O-00603; 05-O-03325</p> <p>LODGED AUG 07 2007 STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>	<p>(for Court's use)</p> <p>FILED JAN 20 2010 <i>loc</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>
<p>Counsel For Respondent</p> <p>SUSAN L. MARGOLIS MARGOLIS & MARGOLIS LLP 2000 Riverside Drive Los Angeles, California 90039 (323) 953-8996</p> <p>Bar # 104629</p>	<p>Submitted to: Program Judge</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: KENNETH SIDNEY KLEGER</p> <p>Bar # 102763</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 June 10, 1962. *8/10/07*
- (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 the 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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 11 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts." SEE ATTACHMENT
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law". SEE ATTACHMENT

(Stipulation form approved by SBC Executive Committee 9/18/2002. Rev. 12/16/2004; 12/13/2006.)



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- (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.

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
- (b) Date prior discipline effective
- (c) Rules of Professional Conduct/ State Bar Act violations:
- (d) Degree of prior discipline
- (e) If Respondent has two or more incidents of prior discipline, use space provided below:
- (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.
- (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.
- (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:

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ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **KENNETH SIDNEY KLEEGER**

MEMBER # **102763**

CASE NUMBER(s): **05-O-00236; 05-O-00603; 05-O-03325**

FACTS AND CONCLUSIONS OF LAW:

Respondent, by entering into this Stipulation Re Facts, Conclusions of Law, and ~~Disposition~~^{Disposition}, hereby waives any variance in the facts and charges as alleged in the Notice of Disciplinary Charges and the facts and conclusions set forth in the Stipulation as filed.

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

Facts for Case No. 05-O-00236:

1. On or about November 8, 2002, Richard Rangel ("Rangel") employed Respondent to represent him as a plaintiff in a personal injury matter for injuries he sustained in an accident on November 6, 2002.
2. Between in or about February 2003 and in or about February 2004, the defendant's insurance company, State Farm, contacted Rangel by letter five times to request a status on his medical treatment. Each time, Rangel forwarded the letter to Respondent by fax.
3. On or about March 4, 2004, Respondent responded by letter to State Farm for the first time and provided some of the medical reports relating to Rangel's injuries.
4. On or about July 1, 2004, State Farm wrote a letter to Respondent, which Respondent received. The letter was mailed via the United States Postal Service, first class postage prepaid, in a sealed envelope properly addressed to Respondent at his official State Bar membership records address and was not returned as undeliverable. In the letter, State Farm requested the status of Rangel's medical treatment in order for claim to be resolved.

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5. Respondent failed to respond to the July 1, 2004 letter. Thereafter, although Respondent gathered and prepared documents on the matter, he failed to file the complaint before the two-year statute of limitations which ran on November 6, 2004.

6. On or about January 31, 2005, State Farm wrote a letter to Respondent, which Respondent received. The letter was mailed via the United States Postal Service, first class postage prepaid, in a sealed envelope properly addressed to Respondent at his official State Bar membership records address and was not returned as undeliverable. In the letter, State Farm informed Respondent that the statute of limitations in Rangel's matter had elapsed.

7. Respondent failed to inform Rangel that the statute of limitations had elapsed in the personal injury matter.

8. On or about February 16, 2005, Rangel wrote a letter to Respondent, which Respondent received. The letter was mailed via the United States Postal Service, first class postage prepaid, in a sealed envelope properly addressed to Respondent at his official State Bar membership records address and was not returned as undeliverable. In the letter, Rangel terminated Respondent's services and demanded that his file be returned to him.

9. Respondent failed to return any portion of the file to Rangel.

10. On or about January 18, 2005, the State Bar opened an investigation, case no. 05-O-00236 pursuant to a complaint filed by Richard Rangel ("the Rangel matter").

11. On or about February 2, 2005, State Bar Investigator Robin Littlefield wrote to Respondent regarding the Rangel matter. The investigator's letter was placed in a sealed envelope correctly addressed to Respondent at his State Bar of California membership records address. The 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 investigator's letter as undeliverable for any other reason.

12. On or about February 17, 2005, State Bar Investigator Robin Littlefield wrote to Respondent again regarding the Rangel matter. The investigator's letter was placed in a sealed envelope correctly addressed to Respondent at his State Bar of California membership records. The 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 letter was not returned as undeliverable or for any other reason.

13. Both of the letters sent by the investigator requested that Respondent respond in writing

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to specified allegations of misconduct being investigated by the State Bar in the Rangel matter. Respondent did not respond to the investigator's letters or otherwise communicate with the investigator, or participate in the investigation in any way.

14. In May 2006, Respondent settled a civil claim made against him by Rangel, Los Angeles Superior Court Case No. BC343811. The amount of the settlement was \$20,000. Respondent has made full payment of this settlement in the form of two cashier's checks.

Conclusions of Law for Case No. 05-O-00236:

15. COUNT ONE: By failing to take any action to either settle or file an action in the personal injury matter prior to the statute of limitation elapsing, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

16. COUNT TWO: By failing to inform Rangel that the statute of limitations had elapsed in the personal injury matter, Respondent failed to inform a client of a significant development in a matter in which he agreed to provide legal services in wilful violation of Business and Professions Code, section 6068(m).

17. COUNT THREE: By failing to return the file to Rangel, Respondent failed to return to a client all client papers and property in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

18. COUNT FOUR: By not providing a written response to the allegations in the Rangel matter or otherwise cooperating in the investigation of the Rangel matter, Respondent failed to cooperate in a disciplinary investigation in wilful violation of Business and Professions Code, section 6068(i).

Facts for Case No. 05-O-00603:

19. On or about May 14, 2004, Jerald Shipman ("Shipman") employed Respondent to represent him in a real estate matter. On that date Shipman paid Respondent \$2,500 for advanced legal fees, plus an additional \$500 for a handwriting expert fee. This \$500 was paid to the handwriting expert by Respondent and Respondent worked with the handwriting expert on this matter.

20. On or about December 23, 2004, Shipman met with Respondent to discuss the real estate matter. At the meeting Respondent informed Shipman that there were problems with the writing samples Shipman had provided to Respondent.

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21. On or about April 8, 2005, Shipman mailed a letter to Respondent, which Respondent received. The letter was mailed via the United States Postal Service, certified mail, return receipt requested, postage prepaid, in a sealed envelope properly addressed to Respondent at his official State Bar membership records address. On about April 11, 2005, the return receipt was signed by "Nancy Gabra" as having been received. In the letter, Shipman terminated Respondent's services, demanded a refund of his fees and demanded that all documents he had given to Respondent be returned to him.

22. Respondent failed to provide an accounting showing how he had earned any portion of the \$2,500 advanced fees paid by Shipman until November 2006.

23. Respondent failed to return any documents in the file to Shipman until October 2005.

24. On or about February 4, 2005, the State Bar opened an investigation, case no. 05-O-00603, pursuant to a complaint filed by Jerald Shipman ("the Shipman matter").

25. On or about March 1, 2005, State Bar Investigator Robin Littlefield wrote a letter to Respondent, which Respondent received, regarding the Shipman matter. The investigator's letter was placed in a sealed envelope correctly addressed to Respondent at his State Bar of California membership records address. The 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 investigator's letter as undeliverable for any other reason. The letter sent by the investigator requested that Respondent respond in writing by March 16, 2005 to specified allegations of misconduct being investigated by the State Bar in the Shipman matter.

26. On or about March 18, 2005, State Bar Investigator Robin Littlefield wrote another letter to Respondent, which Respondent received, regarding the Shipman matter. The investigator's letter was placed in a sealed envelope correctly addressed to Respondent at his State Bar of California membership records address. The 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 investigator's letter as undeliverable for any other reason. The letter sent by the investigator requested that Respondent respond in writing by April 1, 2005 to specified allegations of misconduct being investigated by the State Bar in the Shipman matter.

27. On or about May 12, 2005, Respondent contacted Robin Littlefield by telephone. In the telephone conversation, Respondent indicated he would provide a written response to the specified allegations of misconduct being investigated by the State Bar in the Shipman matter. However, Respondent failed to provide a written response.

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Conclusions of Law for Case No. 05-O-00603:

28. COUNT TWO: By failing to an accounting to Shipman as requested for 18 months after it was requested, Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3).

29. COUNT THREE: By failing to return the file to Shipman until October 2005, Respondent failed, upon termination of employment to promptly release to a client, at the request of a client, all client papers in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

30. COUNT FIVE: By not providing a written response to the allegations in the Shipman matter or otherwise cooperating in the investigation of the Shipman matter, Respondent failed to cooperate in a disciplinary investigation in wilful violation of Business and Professions Code, section 6068(i).

Facts for Case No. 05-O-03325:

31. On or about February 20, 2005, Lisa Avne ("Avne") hired Respondent to substitute into a personal injury matter in connection with three separate automobile accidents in which she was involved. In each case as his fee, Respondent was to receive 33 1/3% of any settlement occurring before trial and 40% of any recovery if the matter went to trial.

32. The insurance carrier for the opposing driver in accident #1 was Allstate; The insurance carrier for the opposing driver in accident #2 was AAA; and the insurance carrier for the opposing driver in accident #3 was Mercury Insurance. In August 2004, all three matters went to trial. The trial lasted three weeks and resulted in a hung jury. A retrial was scheduled to begin in or about late January 2005.

33. In or about January, 2005, on the first day of trial, Respondent settled accident #3 with Mercury Insurance for \$30,000, inclusive of costs.

34. The retrial of the consolidated matters continued until February 4, 2005. On February 4, 2005, the jury in the retrial returned a verdict in Avne's favor, and awarded her \$5,655.31 in compensatory damages and \$2,080.31 in costs (for a total of \$7,735.31) from Allstate for accident #1, and \$20,845.00 in compensatory damages, and \$2,080.31 in costs (for a total of \$22,925.31) from AAA for accident #2.

35. On March 4, 2005, after the second trial had concluded, the \$30,000 Mercury settlement draft was mailed to Respondent and was deposited into Respondent's Client Trust Account, number 16646-05407 at Bank of America ("CTA") on March 4, 2005.

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36. Following his receipt of the Mercury funds, and before receiving the funds from Allstate and AAA, Respondent obtained Avne's permission to recoup his fees and costs for all three cases from the initial \$30,000 received. Respondent agreed to lower his fee in accident #3 from 40% to 33-1/3% in order to obtain the settlement from Mercury. His fee remained at 40% in connection with accidents #1 and 2.

37. Respondent did not receive the Allstate funds until July 5, 2005. He deposited those funds, totalling \$7,735.31, into his CTA on that date. Respondent received the AAA funds, totalling \$22,925.31, on July 14, 2005, and deposited them into his CTA on that date.

38. Around the time Respondent received the Mercury funds, Respondent was under a great deal of personal and professional stress. His mother was dying of breast cancer, and he had primary responsibility for taking her for treatment and for her follow-up care, which increased as her condition worsened. Respondent's assistant left his employ, and he was forced to close up his office. He was in the process of moving his office into his home during this time period. He had a one-year old baby at home as well as an older child to take care of. He was suffering from increasingly frequent and recurring bouts of depression as well as anxiety attacks.

39. As a result of the above stresses, Respondent failed to keep proper records of the funds in his possession. Instead of his normal practice of maintaining a computer-generated ledger sheet, in this matter he kept handwritten notes regarding the balance of the Mercury funds in his account as well as disbursements made. He estimated what his fee would be for the entire case, and withdrew that fee over the period of a few weeks.

40. However, due to Respondent's gross negligence in failing to keep detailed records and accounts regarding his distribution of the Mercury settlement funds, the balance in the CTA fell below the amount he was required to maintain in trust on at least two occasions, June 6, 2005 and July 1, 2005, when the account dipped to \$5,417.15 and \$1,688.86, representing, respectively, shortfalls of \$1,751 and \$5,400. Respondent's gross negligence led to the misappropriation of Avne's funds for his own use and purposes including paying Respondent's own business expenses.

41. In or about May, 2005, Avne wrote a letter to Respondent in which she released him from responsibility for paying her medical liens and expert witness fees. Avne requested that Respondent send her her money immediately, stating that she had personally negotiated her medical bills and that some of her health care providers were willing to accept a lesser amount if they received payment by June 1, 2005.

42. Respondent did not receive all of the Avne funds until July 14, 2005, the date that he

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deposited the AAA funds in his CTA. On the same day, Respondent delivered two checks to Avne -- a cashier's check in the amount of \$19,000.00, and a CTA check (no. 1051) in the amount of \$15,500.00. After deducting funds for the payment of liens and costs, Avne accepted the \$34,500 as the amount owed to her by Respondent.

Conclusions of Law for Case No. 05-O-03325:

43. COUNT ONE: By failing to maintain sufficient funds from the Mercury settlement funds in trust on at least two occasions, Respondent wilfully violated Rule 4-100(A), Rules of Professional Conduct.

44. COUNT TWO: Respondent's gross negligence in handling Avne's Mercury settlement funds led to the misappropriation of these fund constituting a wilful violation of Business and Professions Code, section 6106.

DISMISSALS

The State Bar requests that the State Bar Court dismiss the following counts in furtherance of justice:

- Case No. 05-O-00^{GMA}03, Counts 1, 2, and 4. (Further, Count 2 of Case No. 05-O-00^{MP}03 has been changed to charge a violation of Rules of Professional Conduct, rule 4-100(B)(3), while dismissing the previously charged violation of Rules of Professional Conduct, rule 3-700(D)(2).)
- Case No. 05-O-03325: Counts 3 and 4.

RETURN OF CLIENT FILE: Within thirty (30) days from the date he signs this stipulation, Respondent shall return the entire client file of Richard Rangel. Respondent shall send this file by certified mail, return receipt requested and retain a copy of this receipt and a copy of the file for the period of his probation, making it available to the State Bar Court, State Bar Probation, or the Office of Chief Trial Counsel upon request.

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In the Matter of KENNETH SIDNEY KLEEGER Member #102763	Case number(s): 05-0-00236; 05-0-00603; 05-0-03325
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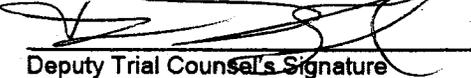
SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

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

If the Respondent is not accepted into the Program or does not sign the 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 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.

<u>03-21-07</u> Date	 Respondent's Signature	<u>KENNETH S. KLEEGER</u> Print Name
<u>3-21-07</u> Date	 Respondent's Counsel Signature	<u>SUSAN L. MARGOLIS</u> Print Name
<u>3-21-07</u> Date	 Deputy Trial Counsel's Signature	<u>DAVID T. SAUBER</u> Print Name

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In the Matter Of KENNETH SIDNEY KLEEGER Member #102763	Case Number(s): 05-O-00236; 05-O-00603; 05-O-03325
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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 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.
- All court dates in the Hearing Department 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

August 7, 2007 _____
Date Judge of the State Bar Court

RICHARD A. PLATEL

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 8, 2007, I deposited a true copy of the following document(s):

ORDER

CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDERS

**CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR COURT'S
ALTERNATIVE DISCIPLINE PROGRAM**

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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

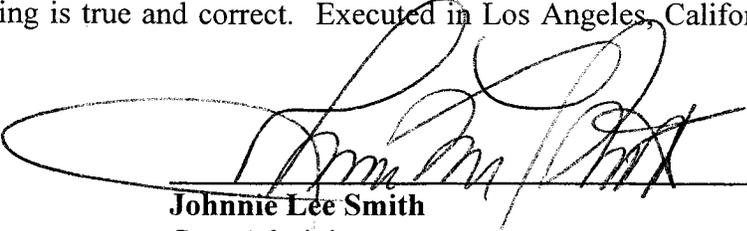
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**SUSAN LYNN MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039**

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

ERIC HSU, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **August 8, 2007**.


Johnnie Lee Smith
Case Administrator