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~~CONFIDENTIAL~~

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~~STATE BAR COURT~~

~~State Bar Court of California~~
~~CLERK'S OFFICE~~
~~LOS ANGELES~~
Hearing Department

PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES

Counsel For The State Bar CHARLES A. MURRAY Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015 Bar # 146069 Tel: (213) 765-1236	Case Number (s) 05-O-04218	(for Court's use) <div style="text-align: center;"> FILED OCT 26 2010 AC STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
ERICA A. TABACHNICK 900 Wilshire Blvd., Suite 1000 Los Angeles, California 90017 Bar # 94324 Tel: (213) 895-4640	<p>PUBLIC MATTER</p>	
In the Matter Of: JOHN ANTHONY LUETTO Bar # 71747 A Member of the State Bar of California (Respondent)	Submitted to: Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 22, 1976.
- (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 (9) 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
- (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.

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

Program

(Printed: 040307)



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 02-O-11512; 02-O-14457
 - (b) Date prior discipline effective May 20, 2004
 - (c) Rules of Professional Conduct/ State Bar Act violations: 4-100(B)(4) & 6068(m)
 - (d) Degree of prior discipline Private Reprimand
 - (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.

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- (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. *SEE PAGE 8*
- (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. *SEE PAGE 9*
- (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. *SEE PAGE 9.*
- (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:

ATTACHMENT TO
ADP STIPULATION RE FACTS, CONCLUSIONS OF LAW

IN THE MATTER OF: **JOHN A. LUETTO** (Respondent"), #71747

CASE NUMBERS **05-O-04218**

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was October 12, 2007.

STIPULATION AS TO FACTS AND CONCLUSIONS OF LAW:

Respondent waives objection to any variances between the facts and conclusions of law alleged in any Notice of Disciplinary Charges that may have been filed and the facts and conclusions of law stipulated to herein.

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, or has otherwise committed acts of misconduct warranting discipline:

05-O-04218

FACTS:

1. At all times relevant herein, Respondent maintained a client trust account at Sunwest Bank, designated account number 301024185 ("client trust account").
2. On April 21, 2002, Ginger Simsek ("Ginger") and her husband Mike Simsek ("Mike") were involved in an automobile accident. At the time, Ginger was 73 years old.
3. Between July 15, 2002 and June 1, 2004, Ginger paid \$9,867.44 in medical bills arising out of the automobile accident. However, there were still outstanding balances owed to State Farm and Blue Cross of California arising out of the April 21, 2002 automobile accident.
4. In November 2002, Mike passed away from causes unrelated to the April 21, 2002 automobile accident.
5. In March 2004, Ginger employed Respondent to pursue a personal injury action on behalf of Mike's estate and herself arising from the April 21, 2002 automobile accident. Respondent was retained on a contingency fee basis and was entitled to one third of any recovery obtained on the Simsek's behalf.
6. On April 20, 2004, Respondent filed a civil action on behalf of the Simseks entitled, *Ginger Simsek et. et al v. Maria Seferian*, Orange County Superior Court, case no. 04CC05055 (the "personal injury action").
7. On April 22, 2004, Ginger reimbursed Respondent \$294.50 for the filing fees in the personal injury action.
8. On June 18, 2004, Respondent agreed to settle the personal injury action on behalf of Mike's estate for \$13,044.
9. On June 30, 2004, Ginger, as trustee of her late husband's estate, signed the settlement and release on behalf of Mike's estate.

10. On July 7, 2004, Respondent received a settlement draft in the amount of \$13,044 from Concord Insurance as settlement of Mike's estate's cause of action in the personal injury action. Respondent did not inform Ginger that he had received the settlement funds on behalf of her late husband.

11. On July 13, 2004, Respondent endorsed Ginger's name on the back of the settlement check and deposited the settlement draft for \$13,044 into his client trust account, pursuant to the authorization contained in the retainer agreement signed by Ginger. However, Respondent's endorsement and deposit was done without Ginger's knowledge and he did not inform her he had done so.

On July 8, 2004, Respondent agreed to settle the personal injury action on Ginger's behalf for \$67,500.

12. On July 13, 2004, Ginger signed the settlement and release regarding her cause of action in the personal injury action.

13. On July 21, 2004, Respondent received a settlement draft from Concord Insurance in the amount of \$67,500 as Ginger's settlement in the personal injury action. Respondent did not inform Ginger that he had received the \$67,500 in settlement funds on her behalf.

14. On July 30, 2004, Respondent endorsed Ginger's name on the back of the settlement check for \$67,500 and deposited the settlement draft into his client trust account, pursuant to the authorization contained in the retainer agreement signed by Ginger. However, Respondent's endorsement and deposit was done without Ginger's knowledge and he did not inform her he had done so.

15. As of July 2004, Respondent had received \$80,544 in settlement funds on behalf of the Simseks.

16. As of July 2004, after deducting \$26,848 (one-third of \$80,544) for attorney fees, Respondent was required to maintain at least \$53,696 in settlement funds on behalf of the Simseks.

17. On August 24, 2004, Respondent dismissed the personal injury action with prejudice.

18. On February 28, 2005, the balance in Respondent's client trust account fell to \$46,780.67, which was below the amount Respondent was required to maintain on behalf of the Simseks.

19. From February 28, 2005 through June 23, 2005, the balance in Respondent's client trust account remained below the amount he was required to maintain on behalf of the Simseks. Despite Respondent's failure to maintain the settlement funds on behalf of the Simseks, from mid-February 2005 through mid-June 2005, Respondent issued a check to himself each month in the amount \$3,700 drawn against his client trust account for the payment of his mortgage.

20. As of May 2005, Respondent had not disbursed any of the \$80,544 in settlement funds to Ginger or to anyone on Ginger's behalf.

21. In May 2005, Ginger informed her family attorney, Edmund Bradley, that she had not received any settlement funds from Respondent.

22. On May 23, 2005, Ginger filed a complaint against Respondent with the Orange County Bar Association ("OCBA"). In her May 23, 2005 complaint, Ginger complained that she had not received any settlement funds from Respondent.

23. As of May 24, 2005, Respondent had not disbursed any of the settlement funds to Ginger or to anyone on Ginger's behalf.

24. By May 24 2005, the balance in Respondent's client trust account had dropped to \$14,879.41.

26. On June 7, 2005, Respondent contacted Ginger regarding her complaint to the OCBA. During the June 7, 2005 conversation, Ginger told Respondent that she had lost her longtime job and the delay in obtaining the settlement funds was a hardship. During the June 7, 2005 conversation, Respondent informed Ginger for the first time that he had received her settlement funds and would send \$30,000 of the funds to her. Thereafter, Respondent failed to disburse any settlement funds to Ginger.

27. On June 14, 2005, Respondent wrote the OCBA in response to Ginger's complaint. In his June 14, 2005 letter, Respondent represented to the OCBA that the Simsek settlement funds has been deposited into his client trust account, and Simsek would be receiving the undisputed portion of the settlement funds "forthwith." Respondent also represented to the OCBA that the balance of the settlement funds would remain in his client trust account until four medical liens were paid on Ginger's behalf. In the June 14, 2005 letter, Respondent represented to the OCBA that he was negotiating with medical providers to accept a reduction of their liens. At the time Respondent made these representations to the OCBA, Respondent knew that he had failed to maintain settlement funds in his client trust account on behalf of Ginger and on behalf of Mike's estate.

28. On July 26, 2005, Ginger wrote the OCBA responding to Respondent's June 14, 2005 letter. In her July 26, 2005 letter, Ginger told the OCBA that Respondent had not disbursed any of the settlement funds and had not provided an accounting. In addition, Ginger contended that the medical liens arising out of the personal injury matter totaled no more than \$10,000. Finally, in her July 26, 2005 letter, Ginger explained that Respondent's failure to disburse the settlement funds had resulted in financial hardship to her.

29. On September 28, 2005, the balance in Respondent's client trust account had dropped to \$13,537.72.

30. As of October 31, 2005, Respondent had not disbursed settlement funds to Ginger or to anyone else on her behalf. On October 31, 2005, the balance in Respondent's client trust account had dropped to \$10,039.28.

31. On May 31, 2006, Respondent issued a check for \$3,378.55 to Meridian Resources Company on Ginger's behalf as payment of the outstanding balance owed to Blue Cross of California.

32. On July 6, 2006, Respondent wrote Ginger informing her that he had paid State Farm \$3,333.33 as reimbursement for medical payments made by State Farm on behalf of Ginger.

33. On July 6, 2006, Respondent wrote Ginger informing her that he had paid State Farm \$3,333.33 as reimbursement for medical payments made by State Farm on behalf of Mike.

34. On July 6, 2006, Respondent issued a check to Ginger for \$38,288.12 as her portion of the \$67,500 in settlement funds.

35. On July 6, 2006, Respondent issued a check to Ginger for \$5,362.67 as payment for Mike's estate's portion of the \$13,044 in settlement funds.

36. On September 19, 2005, the State Bar opened an investigation, case no. 05-O-04218,

pursuant to a complaint filed against Respondent by Ginger Simsek (the "Simsek matter"). On or about September 28, 2005, a State Bar Investigator sent a letter to Respondent requesting a written response to Simsek's allegations along with any supporting documentation, and requesting Respondent to give specific information as listed in his letter. 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 (U.S. Postal Service) in the ordinary course of business. The U.S. Postal Service did not return the investigator's letter as undeliverable or for any other reason. Respondent's response to the investigator's letter was due by October 12, 2005. However, Respondent did not respond or otherwise communicate with the investigator or any other employee at the State Bar.

37. On October 12, 2005, the investigator sent a second letter to Respondent at his State Bar of California membership address again requesting a written response to the Simsek matter. Respondent's written response was due by October 26, 2006. The letter was placed in a sealed envelope correctly addressed to Respondent at his State Bar of California membership address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The U.S. Postal Service did not return the investigator's letter as undeliverable or for any other reason. Again, Respondent did not respond or otherwise communicate with the investigator or any other employee at the State Bar.

38. The investigator's letters asked Respondent to respond in writing to specific allegations of misconduct being investigated by the State Bar in the Simsek matter. Respondent did not respond to the investigator's letters or otherwise communicate with the State Bar.

39. On May 9, 2006, Respondent met with the Deputy Trial Counsel assigned to this matter. At that time Respondent and the Deputy Trial Counsel had a substantive discussion of the facts and allegations in this matter resulting in Respondent retaining counsel and the parties proceeding to an Early Neutral Evaluation Conference on July 24, 2006.

40. On July 6, 2006, Respondent sent Ginger settlement breakdowns for the settlement of her husband's estate claim and of her claim, with checks payable to Ginger in the sums of \$5,362.67 and \$38,288.12, respectively. The breakdown for her husband's estate claim listed a settlement of \$13,044, attorney fees & costs of \$4,348, medical liens paid (State Farm med pay) of \$3,333.33 with the remaining \$5,362.67 going to the client. The breakdown to Ginger listed a settlement of \$67,500, attorney fees & costs of \$22,500, medical liens paid (State Farm med pay \$3,333.33 and Meridian Resources/Blue Cross \$3,378.55) of \$6,711.88, with the remaining \$38,288.12 going to the client. This was a full disbursement of the client funds.

CONCLUSIONS OF LAW:

41. By misappropriating at least \$43,656.28 in client funds belonging to Ginger Simsek and the estate of Mike Simsek and by signing the settlement checks without Ginger's knowledge, Respondent committed acts involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code section 6106.

42. By not maintaining funds received on behalf of the Simseks in his client trust account, Respondent failed to maintain client funds in a Client Trust Account in wilful violation of Rules of Professional conduct, rule 4-100(A).

43. By misrepresenting to the OCBA that he had maintained the settlement funds in his client trust account on behalf of the Simseks and their medical providers, Respondent committed an act involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code section 6106.

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44. By failing to disburse settlement funds to Ginger despite her requests, Respondent failed to promptly pay a client funds in Respondent's possession which the client was entitled to receive, in wilful violation of the Rules of Professional Conduct, rule 4-100(B)(4).

45. By failing to timely notify Ginger that he had received the \$67,500 in settlement funds on her behalf and by failing to inform Ginger that he had received the \$13,044 in settlement funds on behalf of Mike's estate, Respondent failed to promptly notify his client of the receipt of client funds in wilful violation of the Rules of Professional Conduct, rule 4-100(B)(1).

46. By failing to timely negotiate and pay the medical bills on Ginger's behalf and by failing to timely negotiate and pay the medical bills on behalf of Mike's estate, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

47. By not providing a written response to the allegations in the Simsek matter or otherwise participating in the investigation, Respondent failed to cooperate in a disciplinary investigation, in wilful violation of Business and Professions Code section 6068(i).

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Aggravating Circumstances:

Prior Record of Discipline:

Respondent was given a private reproof effective May 20, 2004, resulting from two client matters where he failed to pay settlement funds promptly to clients, failed to communicate with clients, and failed to timely pay a medical lien.

Dishonesty:

Respondent's misconduct was surrounded by concealment.

Trust Violations:

Trust funds were involved and Respondent refused to account to the client whose funds they were for his improper conduct toward the funds.

Harm:

Respondent denied his client over \$43,000 of her funds for almost two years.

Multiple Acts:

Respondent current misconduct evidences seven distinct acts of wrongdoing.

Mitigating Circumstances:

Physical Problems:

In July 2005, Respondent suffered a compound fracture of his leg from a motorcycle accident. It required surgery and he was out of the office for three months.

Family/Personal Problems:

In 2002, Respondent's wife unexpectedly experienced a recurrence of injuries from an accident that had happened years before. She had dental surgery in 2000 that apparently reopened an infection that had kept her bedridden periodically for weeks at a time from 200 to May 2006. This required constant care and was of great concern to Respondent.

In the Summer of 2004, Respondent's mother became gravely ill with liver and heart disease. Respondent moved her into his home and cared for her as well as his wife during this time.

In the Summer of 2004, Respondent's long-time paralegal left his employment and Respondent was unable to replace him. This paralegal had also served as office manager and Respondent was left without support staff.

Good Character:

Three attorneys submitted letters representing that they know Respondent, think very highly of him as a person and a lawyer, and believe he is honest and of good moral character. Two have known Respondent for 30 years and one for 6 years. All three state in their letters that they know about the current charges though when asked what the charges are one responded that they involve a clerical error and delay in failing to send a client her funds; a second knew that it involved a misappropriation of \$43,000 and the client did not get her money promptly; and, the third said he read the entire Notice of Disciplinary Charges. All three said they consider themselves to be close friends of the Respondent and felt the misconduct at issue was totally aberrant behavior though none knew of Respondent's prior discipline.

In 2005, Respondent was elected president of the Orange County Trial Lawyers Association, which also involved his service on the Board of California Association of Consumer Attorneys. He has been on the faculty of the Orange County Bar Association College of Trial Advocacy since 1990. He maintains other community involvements.

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In the Matter of JOHN ANTHONY LUETTO Member #71747	Case number(s): 05-O-04218
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SIGNATURE OF THE PARTIES

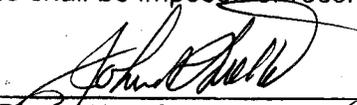
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

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.

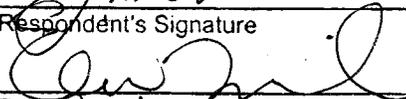
If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement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

10/22/07
Date


Respondent's Signature

JOHN A. LUETTO
Print Name

10/29/07
Date


Respondent's Counsel Signature

ERICA A. TABACHNICK
Print Name

4/7/08
Date


Deputy Trial Counsel's Signature

CHARLES A. MURRAY
Print Name

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In the Matter Of JOHN ANTHONY LUETTO Member #71747	Case Number(s): 05-O-04218
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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.)

04-07-05
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 April 7, 2008, I deposited a true copy of the following document(s):

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

**CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDER AND
STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

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

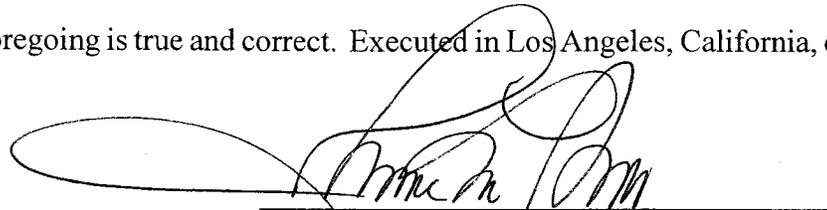
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ERICA ANN TABACHNICK
900 WILSHIRE BLVD #1000
LOS ANGELES, CA 90017**

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

CHARLES MURRAY , Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **April 7, 2008**.



Johnnie Lee Smith
Case Administrator
State Bar Court