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

Counsel For The State Bar Robin Brune 180 Howard Street San Francisco, California 94015 Bar # 149481	Case Number (s) 06-O-13040 Submitted to: Settlement Judge	(for Court's use) PUBLIC MATTER FILED <i>[Signature]</i> JUL 24 2007 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Ray Hassen Hassan Law firm 1801 Bush Street, Suite 304 San Francisco, California 94'09 Bar # 50717	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: Harry Tom Miller Bar # 104709 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 3, 1982**.
- (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 **12** 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".
- (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.

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- (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
 - (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. **See attachment.**
- (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. **Respondent, who is 74, suffered the death of his wife of 31 years in 2004.**
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

See attachment.

D. Discipline:

- (1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of **one year**.
- 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 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 **thirty days**.
- 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.

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- (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:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> 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

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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: Supervised practice. See page ten (10)**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Harry Tom Miller

CASE NUMBER(S): 06-O-13040 ET AL.

FACTS AND CONCLUSIONS OF LAW.

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

On November 7, 2005, respondent filed suit on behalf of Accelerated Recovery Specialists, Inc, against Kathamek Sengchanthalangsy and Kenneta Sengchanthalangsy, entitled *Accelerated Recovery Specialist, Inc, Plaintiff, vs. Kathamek Sengchanthalangsy and Kenneta Sengchanthalangsy*, case no. I NO48520, filed in Superior Court, County of San Diego, North County Division.

On January 6, 2006, Attorney Steve Wickman wrote to respondent and advised him that the suit against Kathamek Senchanthalangsy was brought unjustly and without good cause for several reasons, including, but not limited to, the following: i) Kathamek Senchanthalangsy was not a debtor on the subject account; the account was in the name of Kenneta Senchanthalangsy only; ii) Kathamek Senchanthalangsy was never given a 30 day validation notice pursuant to 15 U.S.C. Section §1692g; and, iii) Kathamek Senchanthalangsy sent a letter on July 9, 2001, to Accelerated Recovery Specialist asking for validation of the alleged debt, and never received a response, again in violation of 15 U.S.C. Section 1692g. Attorney Wickman requested an immediate dismissal of the suit.

Attorney Wickman wrote again on January 19, 2006 and again requested immediate dismissal of the suit against Kathamek Senchanthalangsy.

On January 27, 2006, respondent wrote Attorney Wickman a letter and purported to enclose proof that Kathamek Senchanthalangsy was a debtor on the subject account, and that he had received a 30 day validation notice. However, the only document enclosed was an "Affidavit of Correctness" signed by one Larry Vasbinder, claiming to confirm the debt.

On March 9, 2006, respondent dismissed the suit against Kenneta and Kathamek Senchanthalangsy. Respondent signed the request for dismissal on March 3, 2009. Respondent failed to serve a copy of the dismissal on Attorney Wickman.

On March 3, 2009, (the same day that he signed the Request for Dismissal) respondent also signed a request for form interrogatories against Kathamek Senchanthalangsy. These documents were served on Kathamek Senchanthalangsy, through his counsel, on March 6, 2006, by Tatiana Perez, who also worked for Accelerated Recovery Specialist, Inc.

On April 10, 2006, Attorney Wickman wrote a letter to respondent regarding outstanding discovery requests and again indicating that the suit was without merit.

On April 18, 2006, Attorney Wickman called the Court and was informed by the Court Clerk that respondent had dismissed the matter on March 9, 2006.

On October 17, 2006, Attorney Wickman brought suit against respondent and Accelerated Recovery Specialists Inc, in federal court, entitled *Kathamek Sengchanthalangsy vs. Accelerated Recovery Specialists, et.al*, case no. 06cv1124-JAH(BLM) filed in United States District Court, Southern District of California.

The suit was a class action suit for violating collection laws. Respondent was specifically named for failing to provide notice pursuant to 15 U.S.C. 692g; continuing collection activity after failing to provide responsive debt verification; and filing suit on a time barred claim; making threat of legal action on a time-barred claim; falsely claiming to represent client "household bank" (sic); malicious prosecution; and violation of Business and Professions Code, section 17200.

Respondent defaulted in the federal lawsuit brought by Attorney Wickman.

Respondent worked for Accelerated Recovery Specialists on a contract, and/or hourly basis. At one point, he was paid \$25.00 per hour to arrive at the Accelerated Recovery Specialist offices and sign legal pleadings and documents.

Respondent is not fully versed in collections law nor was he fully familiar with the files for the pleadings he signed on behalf of Accelerated Recovery Specialists, Inc. Respondent is unable to say with any assurance how many suits by Accelerated Recovery Specialists, Inc, were brought in his name. Non-legal staff at Accelerated Recovery Specialists would decide which cases had sufficient evidence to warrant litigation, prepare all the pleadings, and have respondent sign pleadings at the rate of \$25.00 per hour. Respondent would sign these pleadings without proper investigation of the facts or law. By taking the aforementioned actions, Accelerated Recovery Specialists were engaging in the practice of law without a license, and respondent was aiding them in this endeavor.

Conclusions of Law

1. By bringing suit in violation of federal collection laws; by bringing suit against Kathamek Senchanthalangsy without verifying that Kathamek Senchanthalangsy owed the debt; and by pursuing interrogatories against Kathamek Senchanthalangsy after he in fact dismissed the suit, respondent failed to counsel or maintain such action, proceedings, or defenses only as appear to him legal or just, in wilful violation of Business and Professions Code, section 6068(c).
2. By signing pleadings on an hourly basis without being familiar with the files, by not being versed in collection law; and by not knowing which cases were pursued in his name, respondent aided and abetted Accelerated Recovery Specialists, Inc, in the unauthorized practice of law, in wilful violation of Rules of Professional Conduct, rule 1-300(A).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was June 5, 2007.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of June 11, 2007, the costs in this matter are \$ 1,983.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

AUTHORITIES SUPPORTING DISCIPLINE.

Pursuant to Standard 2.6 of the Standards for Attorney Sanctions for Professional Misconduct (hereinafter "standards"), culpability of an attorney of section 6068(c) "shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any to the victim..." Standard 2.10 for culpability of rule 1-300(A) "shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim..." While the Standards are not mandatory, they are entitled to great weight.

Case law also supports the recommended discipline in matters involving one case of aiding and abetting unlicensed practice. In one matter, three attorneys were found culpable of aiding in the unauthorized practice of law. Two of the attorneys received ninety days actual suspension and the third attorney received one year of actual suspension. (*Geibel v. State Bar* (1938) 11 Cal. 2d. 412.) In *Geibel*, three attorneys aided and abetted the unlicensed practice of law in five lawsuits, maintaining vexatious and malicious litigation in federal court and collecting and retaining funds. Lay persons joined with attorneys, including Geibel, created a land trust and brought five suits in the name of the estates to quiet title and for restitution of possession of real and personal property. The Court affirmed the committee's findings that the complaint was a hodgepodge of irrelevant and meaningless expressions, incoherent and unintelligible. The court found that many of the pleadings were prepared by the lay persons and the attorneys aided and abetted the lay persons in the collection of fees for the unlicensed practice. Geibel received a one year actual suspension, while his two cohorts, Morfoot and Shelly, received a ninety day suspension.

In a case of breaching the duty to maintain only actions as appear legal and just, the attorney received a thirty day actual suspension. (*Sorenson v. State Bar* (1991) 52 Cal.3d. 1036.) In *Sorenson*, the attorney sued a court reporter over a dispute involving a \$45 bill, and sued for \$14,000 in damages.

This case is less egregious than *Geibel* because there is only one underlying suit that is the subject of this disciplinary matter, not five, and the wrongful collection of funds is not involved. This case is analogous to *Sorenson* in that respondent brought an unjust action, but more egregious since it also involves the unauthorized practice of law.

The Supreme Court has, in the past, ordered that an attorney's practice be supervised when, as here, it is appropriate. *Chasteen v. State Bar* (1985) 40 Cal.3rd.586.

AGGRAVATING CIRCUMSTANCES.

Standard 1.2 (iv) significant harm

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

The defendant in the underlying civil suit, Khathamek Sengchanthalangsy, was forced to hire counsel and defend against an unjust action. Due to respondent's failure to serve the notice of dismissal on opposing counsel, and his sending interrogatories after he signed the dismissal, the defendant incurred additional costs as well.

MITIGATING CIRCUMSTANCES.

ADDITIONAL MITIGATING CIRCUMSTANCES.

Respondent was admitted in 1982 and has no prior discipline.

STATE BAR ETHICS SCHOOL.

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

OTHER CONDITIONS NEGOTIATED BY THE PARTIES.

During the period of respondent's suspension and probation respondent's practice of law will be supervised. His current employer, (and counsel) Ray Hassan, has agreed to provide the supervision. The supervisor shall be a licensed attorney, and shall report, in writing, attested to under penalty of perjury, on a quarterly basis, the following:

- 1) that they have met with the respondent either in person or over the phone at least once a month;
- 2) that, at the meetings, they have reviewed with respondent, respondent's cases and/or workload

and the legal issues involved;

3) and that in the opinion of the supervisor, the respondent is or is not (select one) compliant with the Rules of Professional Conduct and the Business and Professions Code.

The supervisor's written report addressing these three items shall be included with each quarterly report filed by the respondent. If respondent fails to provide a written report from his supervisor with each quarterly report, he will be in violation of probation. In the event that respondent changes supervisors, he must notify the Office of Probation within thirty days of any change, and the new supervisor must send a letter to the Office of Probation, agreeing to the terms of the supervision.

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In the Matter of Harry Tom Miller	Case number(s): 06-O-13040
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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>June 21, 2007</u> Date	<u>Harry Tom Miller</u> Respondent's Signature	<u>Harry Tom Miller</u> Print Name
<u>6/21/2007</u> Date	<u>Ray Hassan</u> Respondent's Counsel Signature	<u>Ray Hassan</u> Print Name
<u>6/25/07</u> Date	<u>Robin B. Brune</u> Deputy Trial Counsel's Signature	<u>Robin B. Brune</u> Print Name

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In the Matter Of Harry Tom Miller	Case Number(s): 06-O-13040
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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.
- (1) The box adjacent to paragraph E(7) on page 5 is checked making that probation condition applicable to this matter.
 - (2) The box adjacent to paragraph F(3) on page 5 is checked making that condition applicable to this matter.

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.)**

7/19/07
Date

[Signature]
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 San Francisco, on July 24, 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 San Francisco, California, addressed as follows:

**REYAUD HASSAN
HASSAN LAW FIRM
1801 BUSH ST #304
SAN FRANCISCO, CA 94109**

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

ROBIN BRUNE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **July 24, 2007**.



Bernadette C. O. Molina
Case Administrator
State Bar Court