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

Counsel For The State Bar Susan Chan Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 Bar # 233229	Case Number (s) 07-C-13666-PEM	(for Court's use) PUBLIC MATTER FILED <i>[Signature]</i> JUL 29 2008 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Jonathan Arons 101 Howard Street, Suite 310 San Francisco, CA 94105 Bar # 111257	Submitted to: Settlement Judge	
In the Matter Of: Michael McKneely Bar # 214896 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <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 **November 20, 2001**.
- (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 **13** 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



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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: **2009 and 2010** (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 Attached Stipulation.**
- (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. **See Attached Stipulation.**
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

See Attached Stipulation.

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 \$ 2,800 on or between February 9 - 11, 2007 in restitution to Fresno County Prosecutor's Association 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. **Gambling Addiction.**
- (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

See Attached Stipulation

D. Discipline:

(1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of **two 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 **five 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 **one year with credit for time on interim suspension**.
- 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:
- | | |
|--|---|
| <input checked="" type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input checked="" 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.

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- (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: **January 14, 2008.**
- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MICHAEL MCKNEELY

CASE NUMBER(S): 07-C-13666-PEM

FACTS AND CONCLUSIONS OF LAW.

Case No. 07-C-13666

A. Facts

1. Respondent was employed by the District Attorney of Fresno County as a Deputy District Attorney from September 8, 2003 until March 2007.

2. Respondent served as Treasurer for the Fresno County Prosecutor's Association ("FCPA") from February, 2005 until February, 2007. As FCPA Treasurer, respondent was authorized to write checks for cash, but only for legitimate FCPA purposes.

3. On or between July 17, 2006 and September 15, 2006, respondent stole approximately \$2,800 from the FCPA fund. Respondent wrote multiple checks made payable to "cash" and to himself.

4. A new FCPA Treasurer was elected on or about February 1, 2007. The new FCPA Treasurer attempted to obtain the FCPA checkbook and financial records from respondent. Respondent supplied the new FCPA Treasurer with two check registers and one checkbook. Respondent delayed in providing receipts, logs, or expenditure justification. Also, all carbon duplicates were removed from the checkbooks. An investigation into the FCPA account in 2005 and 2006 revealed that respondent had written checks both to cash and to himself without legitimate FCPA purpose. The checks written to cash were written in late July 2006.

5. On or between February 9, 2007 and February 11, 2007, respondent repaid the stolen funds with interest.

6. On or about March 5, 2007, the newly elected 2007 FCPA President contacted respondent about the discrepancy in the financial records. Respondent stated he had a gambling problem and admitted he had written checks to himself after losing money at the Table Mountain

casino.

7. On or about March 2007, Respondent resigned from his job as a Fresno County District Attorney.

8. On or about September 27, 2007, respondent was charged with violating Penal Code section 487(a), one count, grand theft by embezzlement, a felony.

9. On or about October 4, 2007, Respondent pleaded nolo contendere to a misdemeanor violation of Penal Code section 484(a) theft, one count. In exchange for the plea deal, the felony grand theft charge (Penal Code section 487(a)), was dropped.

10. Respondent was placed on interim suspension effective January 14, 2008.

B. Conclusions of Law

Respondent's conviction of Penal Code section 484(a), theft, is a serious offense which necessarily involves moral turpitude, in violation of Business and Professions Code sections 6068(a) and 6106.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was July 16, 2008.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 9, 2008, the estimated prosecution costs in this matter are approximately \$3,530.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.

Standard 2.2(a) states: "Culpability of a member of wilful 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 a one-year actual suspension, irrespective of mitigating circumstances."

Standard 2.3 states: "Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law."

Standard 3.2 provides that "Final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission shall result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a two-year actual suspension, prospective to any interim suspension imposed, irrespective of mitigating circumstances."

In re Dedman (1976) 17 Cal.3d 229, 231 [respondent convicted of grand theft and falsifying documents; three year actual suspension].

Chang v. State Bar (1989) 49 Cal.3d 114, 128 [\$7,000 misappropriation is significant; disbarment ordered].

Grim v. State Bar (1991) 53 Cal.3d 21, 30 [misappropriation of \$5,546 not insignificant; disbarment ordered].

Lawhorn v. State Bar (1987) 43 Cal.3d 1357, 1368 [\$1,355.75 misappropriation not insignificant; two year actual suspension].

AGGRAVATING CIRCUMSTANCES.

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Standard 1.2(b)(ii) defines misconduct evidencing multiple acts of wrongdoing or a pattern of misconduct as aggravation. Between approximately July 17, 2006, and September 15, 2006, (or approximately 3 months), respondent stole and/or negotiated **seven** checks which were the property of the Fresno County Prosecutor's Association. These checks totaled approximately \$2,800.00. These facts constitute both a pattern and multiple acts of wrongdoing.

Standard 1.2(b)(iii): Bad faith, dishonesty. Respondent's misconduct was all about dishonesty and concealment.

Standard 1.2(b)(iv) provides that misconduct which harms significantly a client, the public or the administration of justice is considered aggravation. Respondent breached his

fiduciary duty in an entrusted position with the FCPA resulting in significant harm by depriving the FCPA of thousands of dollars.

MITIGATING CIRCUMSTANCES.

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

Candor and Cooperation - Standard 1.2(e)(v): Respondent displayed spontaneous candor and cooperation to the State Bar Intake Unit by self-reporting his misdemeanor conviction of Penal Code section 484, by letter dated October 31, 2007. Respondent has fully participated in these proceedings. Respondent submitted to an independent medical examination conducted by Dr. Timothy Fong, in Los Angeles, California. Dr. Fong is an addition specialist with an emphasis in gambling addictions. Dr. Fong's report confirmed respondent's gambling addiction and concluded that the combination of respondent's gambling addiction, alcohol abuse and prescription drug abuse interfered with his judgment during the period he committed the offense.

Good Character - Standard 1.2(e)(vi): Respondent's good character has been attested to by a wide range of references in the legal and general communities who are aware of his misconduct. Respondent received letters of reference from the following seven attorneys: Dennis Lewis, Bob Whalen, Mark Broughton, Ernie Benck, Doug Foster, Serita Rios, and James Kelly. Respondent also received letters attesting to his good character from his family members, namely, his uncle, James Brannan and his aunt, Patrice Brannan.

Remorse and Recognition - Standard 1.2(e)(vii): Respondent repaid the stolen funds, with interest. Respondent admitted to his misconduct when questioned by the 2007 FCPA President regarding the discrepancy in the financial records. Respondent voluntarily contacted the Lawyers Assistance Program ("LAP") and has been participating in LAP since March 9, 2007. He was treated for substance abuse and gambling addiction as an inpatient in a residential treatment program from July 2, 2007, through August 3, 2007. Respondent also attends an outpatient group called The Eleventh Hour on a weekly basis. Respondent is an active participant in LAP, the Other Bar, Alcoholics Anonymous and Gamblers Anonymous. Respondent also receives individual counseling.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES.

1. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
2. Attendance at Abstinence-Based Self-Help Group.

Respondent shall attend at least four (4) meetings per month of an abstinence-based self-help group of his own choosing, including *inter alia*, Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T, S.O.S. Other self-help maintenance programs are acceptable if they include: (i) a subculture to support recovery (meetings); and (ii) a process of personal development that does not have financial barriers. (See O'Conner v. Calif. (C.D. Calif. 1994) 855 F. Supp. 303 [No first amendment violation where probationer given choice between AA and secular program].) The program called "Moderation Management" is not acceptable because it allows the participant to continue consuming alcohol.

Before respondent attends the first self help group meeting, he shall contact the Office of Probation and obtain approval for the program that he has selected. Thereafter, on a quarterly basis with his quarterly and final written reports, respondent shall provide documentary proof of attendance at the meetings of the approved program to the Office of Probation, in a form acceptable to the Office of Probation.

3. Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
4. Respondent must maintain with the Office of Probation a current address and a current telephone number at which respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require respondent to deliver respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to respondent that the Office of Probation requires an additional screening report.
5. Medical Conditions.

Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of two (2) times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for the period of

probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

ELECTION NOT TO REQUEST STATE BAR COURT'S ALTERNATIVE DISCIPLINE PROGRAM.

By signing this stipulation, Respondent acknowledges that he was provided information about the State Bar Court's Alternative Discipline Program, that he was offered the opportunity to request referral to and participation in that program, and that he has elected not to do so.


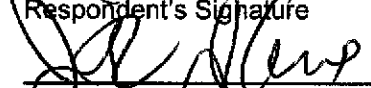
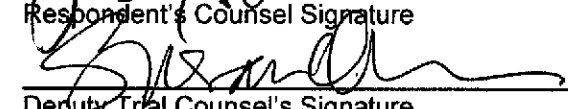
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In the Matter of Michael McKneely	Case number(s): 07-C-13666
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SIGNATURE OF THE PARTIES

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.

July 21, 2008
Date
July 25, 2008
Date
7/25/08
Date

 Respondent's Signature	<u>Michael B. McKneely</u> Print Name
 Respondent's Counsel Signature	<u>Jonathan I. Arow</u> Print Name
 Deputy Trial Counsel's Signature	<u>JINSAW CHAN</u> Print Name

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 29, 2008, 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:

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

**JONATHAN ARONS
101 HOWARD ST #310
SAN FRANCISCO CA 94105**

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

SUSAN CHAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **July 29, 2008**.


George Hue
Case Administrator
State Bar Court