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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, CA 94105 Bar # 149481	Case Number (s) 07-J-11442, 07-O-12919	(for Court's use) PUBLIC MATTER FILED  AUG 12 2008 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Richard Oriakhi 55 New Montgomery St., Suite 51 San Francisco, CA 94105 Bar # 193797	Submitted to: Assigned Judge	
In the Matter Of: Richard Oriakhi Bar # 193797 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO 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 **December 22, 1997**.
- (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.



(Do not write above this line.)

- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- costs added to membership fee for calendar year following effective date of discipline.
 - 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 or a separate attachment entitled "Prior Discipline."
- (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. **See attachment.**
- (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

See attachment.

D. Discipline:

- (1) **Stayed Suspension:**
 - (a) Respondent must be suspended from the practice of law for a period of **one year**.

(Do not write above this line.)

- 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:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) 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.
- (4) 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.

- (5) 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.
- (6) 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.

(Do not write above this line.)

- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8) 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.
- (9) 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 within one year. **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) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: RICHARD ORIAKHI

CASE NUMBER(S): 07-J-11442, 07-O-12307, 07-O-12919.

FACTS AND CONCLUSIONS OF LAW

1. Case No. 07-J-11442

On November 29, 2005, the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") ordered respondent and another attorney at respondent's law firm, Hector Roman, to show cause why each of them should not be disciplined, for conduct unbecoming a member of the court's bar, alleging that respondent and Roman violated court orders and rules in eight petitions for review in which another attorney, Olumide Obayemi (hereinafter "Obayemi"), had been prior counsel. The court further alleged that respondent failed to prosecute or respond to court orders in numerous cases.

On December 28, 2005, respondent filed his response to the Order to Show Cause, and requested a hearing.

On April 7, 2006, respondent filed an "Attorney Answer to Order to Show Cause and Request for a Hearing." In his answer, respondent identified himself as Obayemi's supervising attorney.

On April 18, 2006, the Ninth Circuit held a hearing on the Order to Show Cause.

On January 23, 2007, the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") filed a Report and Recommendation and Order. In the Report and Recommendation the Court detailed the misconduct of respondent. Respondent did not file objections to the Appellate Commissioner's January 23, 2007 Report and Recommendation.

On March 30, 2007, the Ninth Circuit adopted the Report and Recommendation in full.

The Ninth Circuit placed respondent on probation for twelve months, and required respondent to complete six hours of continuing legal education in the areas of immigration law and federal appellate practice, and law office management. The Ninth Circuit also sanctioned respondent \$500.00 to be paid within 21 days. The Ninth Circuit further ordered respondent to submit a status report after 12 months documenting his compliance with the probationary terms and

showing proof of his membership in good standing with the State Bar of California.

The findings of the Ninth Circuit's January 23, 2007 Report and Recommendation, which was adopted in full on March 30, 2007, included the following:

In 1997, Roman formed Roman & Singh, with offices in New York. In 2001, respondent opened a Roman & Singh office in California, where he was the sole attorney. In September 2002, Jaspreet Singh, respondent's employer, hired Obayemi. The law firm of Roman & Singh were responsible for the client and the progress of a client's case. Respondent was primarily responsible for Roman & Singh's California clients. Any mail for the California office was delivered to the New York office and then forwarded to the California office and directed to either respondent or Obayemi. Roman & Singh did not maintain a master data base containing complete information for the clients and their cases for the time period involved in the misconduct. The firm only had a computerized list containing the name of the client, the immigration court number, and, if appropriate, a Ninth Circuit docket number. All client address information was solely contained in the hard copy client file. There was no back up calendaring system for pending cases.

In early 2003, respondent discovered that Obayemi was taking clients from Roman & Singh and representing the clients himself. Roman & Singh terminated Obayemi in November, 2003. After Obayemi left, respondent discovered that Obayemi had taken several client matters with him, and that several physical files belonging to the clients of Roman & Singh were missing. Respondent did not have contact information for the clients. Respondent entered his notice of appearance in some cases in which Obayemi had kept the file. He copied the file from the immigration court, and informed the client that he was the attorney. In some matters, Obayemi forwarded client files or orders back to respondent.

Obayemi took client case files belonging to Roman & Singh in eight petition for review matters and then abandoned the clients by failing to prosecute the petitions. Respondent was unable to discover that Obayemi took the client files and abandoned the cases because the law firms case management procedures were inadequate, as all information was stored in one location (the file) with no back-up system. Respondent failed to enter timely appearances in the eight matters abandoned by Obayemi.

In three additional cases, (*Rana, Gupreet Singh, and Gurmej Singh*) the Ninth Circuit sent orders to the New York office requiring a response, and ordering an attorney from Roman & Singh to enter an appearance in the petitions for review. Roman and respondent negligently failed to respond to the court orders, which were either dismissed voluntarily or decided on the merits.

In the *Rana* matter, respondent and Roman failed to timely file an opening brief because they did not properly supervise Obayemi and did not have an adequate system for tracking cases.

Respondent failed to file timely opening briefs or a timely motion for extension of time in eight petitions for review (*Singh, Dhesi, Padda, Singh, Kaur, Chakraboarty, Singh, Klatyal*).

The Ninth Circuit found that respondent committed negligent misconduct by failing to implement an adequate case management system and calendaring system.

The Ninth Circuit further found that respondent, by clear and convincing evidence, violated a number of court rules and orders and ethical rules. Respondent failed to supervise Obayemi and neglected to have an adequate system to monitor his cases. Respondent failed to enter timely appearances in Obayemi's Petitions for Review to protect their client's interests and prosecute their petitions diligently.

The Ninth Circuit found no evidence of actual harm to the clients. The violations of court rules and orders and other misconduct burdened the court, inconvenienced opposing counsel, and had a potentially adverse effect on the legal proceedings.

Conclusions of Law

1. By failing to adequately supervise Obayemi, resulting in Obayemi removing client files from Roman & Singh and respondent being unable to identify which files were taken or contact those clients; by failing to adequately maintain a back up system of client information, resulting in the filing of many late petitions after Obayemi abandoned the cases; and by filing one deficient brief before the court, and by filing eight untimely motions for extension of time before the court, respondent failed to perform, in wilful violation of Rules of Professional Conduct, rule 3-110(A).
2. Case No. 07-O-12919 (Chahal)

Statement of Facts

On May 27, 2004, the immigration court ordered that Atar Singh Chahal ("Chahal") be removed from the United States, to India, in case no. A77-381-836. In June, 2004, Chahal hired respondent to appeal the denial of his asylum petition before the Board of Immigration Appeals (BIA). Chahal agreed to pay the respondent the sum of \$1,500. Chahal paid the respondent approximately \$500-\$700 dollars, at that time, with the understanding that he could pay the remaining balance later. The parties did not execute a written fee agreement.

On June 24, 2004, respondent filed a Notice of Appeal to the BIA, in case no. A77-381-836, challenging the immigration judges' denial of Chahal's asylum petition. (EOIR-26 form). On April 8, 2005, the BIA issued a briefing schedule in the matter, requiring respondent to file a brief in support of the appeal by April 29, 2005. On April 28, 2005, respondent filed a request

for an extension of time to file his brief. The BIA granted respondent's motion and ordered the brief filed no later than May 20, 2005. Respondent failed to file a brief by May 20, 2005 or at anytime thereafter.

On June 9, 2005, the opposing side, representing the government, filed for a summary dismissal of Chahal's appeal, due to the fact that respondent failed to file briefs. Respondent did not respond to the government's motion for a summary dismissal. On November 1, 2005, Chahal's appeal was denied. The denial was based upon the merits, and not the motion for a summary dismissal.

On June 13, 2005, after the deadline for the briefs had passed, respondent's office assistant, on respondent's behalf, sent Chahal a letter indicating that respondent lacked sufficient funds, from Chahal, to file the brief. Respondent's assistant appropriately addressed this letter to Chahal at 562 Tule Spring Street, Stockton, California 95210. Chahal's sister, Narinderjit, sent respondent \$500.00 in response to the request for more funds. Respondent returned the check on July 5, 2005, stating that the funds were untimely.

At no time prior to the May 20, 2005 deadline, did respondent contact Chahal and advise him that additional funds were required before respondent would proceed with the case.

Respondent did not advise Chahal of the adverse decision of November 1, 2005. A legal assistant at respondent's law firm, Dolores Jayaraj, erroneously sent a copy of the November 12, 2005 decision to the wrong address, on Joett Drive, in Turlock, California. Chahal did not receive a copy of the decision and was not aware of the dismissal until March, 2007, when he received written notice of the denial of his application for renewal of permission to accept employment in the United States.

Conclusions of Law

1. By failing to timely file a brief to the BIA on behalf of Chahal's notice of appeal, respondent failed to perform, in wilful violation of Rules of Professional Conduct, rule 3-110(A).
2. By failing to timely advise Chahal of the financial considerations prior to the briefing deadline, and by failing to advise Chahal that he would not be filing a brief on Chahal's behalf in a timely manner; respondent failed to keep his client reasonably informed of significant developments in a matter in which he agreed to provide legal services, in wilful violation of Business and Professions Code, section 6068(m).

PENDING PROCEEDINGS

The disclosure date referred to, on page one, paragraph A.(7), was July 11, 2008.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 11, 2008, the costs in this matter are \$2,522.65. 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

Disciplinary case law involving repeated violations with immigration matters warrant significant suspension. Case law also supports a range from reproof to actual suspension for client abandonments. In this case, the State Bar's assessment is that respondent's misconduct stems primarily from poor law office management practices, as noted by the Ninth Circuit. As respondent was an associate with the firm, he has less culpability than the partners. And the actions of Obayemi, the associate who left the office, taking cases with him, contributed to the circumstances that gave rise to the misconduct. Therefore, the misconduct falls in a mid-range between the discipline for immigration cases and general abandonments. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar. Ct. Rptr. 498; *Gadda v. State Bar* (1990) 50 Cal. 3d. 344; *In re Gadda* (Review Dept. 2002) 4 Cal State Bar Ct. Rptr. 416; *In re Brockaway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944. In the first *Gadda* matter, the attorney committed misconduct in two immigration matters, including misrepresentation and failure to perform, and received six months of actual suspension. As distinguished from *Gadda*, this case has no allegations of misrepresentation. In *Brockaway*, the attorney received a two year suspension for failing to perform in four matters, including unearned fee issues. Several of the matters were immigration cases.

Abandonments in one client matter also warranted low level discipline. *Hulland v. State Bar* (1972) 8 Cal. 3d. 440 (fail to perform in a divorce matter, fee dispute, public reproof); *Van Sloten v. State Bar* (1989) 48 Cal. 3d. 921. (stayed suspension for failure to perform in a dissolution matter).

In this matter, the *Chahal* case is most analogous to a one client abandonment, while the Ninth Circuit matters involve problems with law office management, the conduct of Obayemi, and the joint responsibility of respondent's firm's partners. Therefore, the Bar assessed that a stayed suspension was the appropriate balance of these factors.

AGGRAVATING CIRCUMSTANCES

Standard 1.2(b)(ii) multiple actions

PRIOR DISCIPLINE

None

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES

Respondent failed to timely file for an extension of time in eight matters pending before the Ninth Circuit, indicating multiple matters.

ADDITIONAL AGGRAVATING CIRCUMSTANCES

None

MITIGATING CIRCUMSTANCES

Standard 1.2(e)(v) candor and cooperation

FACTS SUPPORTING MITIGATING CIRCUMSTANCES

Respondent has been candid and cooperative in reaching a stipulation in this matter.

ADDITIONAL MITIGATING CIRCUMSTANCES

Respondent was admitted in 1997 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.

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.

(Do not write above this line.)

In the Matter of ORIAKHI, RICHARD	Case number(s): 07-J-11442, 07-O-12919
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SIGNATURE OF THE PARTIES

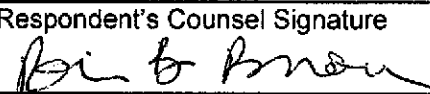
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

July 23, 2008
Date


Respondent's Signature

RICHARD ORIAKHI
Print Name

7/23/2008
Date


Deputy Trial Counsel's Signature

ROBIN BRUNE
Print Name

(Do not write above this line.)

In the Matter Of ORIAKHI, RICHARD	Case Number(s): 07-J-11442, 07-O-12919
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Aug 8, 2008
Date

Jay M
Judge of the State Bar Court
Lucy Armen Daviz

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 August 12, 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:

**RICHARD E. ORIAKHI
LAW OFFICE OF RICHARD E ORIAKHI
55 NEW MONTGOMERY ST STE 519
SAN FRANCISCO, CA 94105**

- 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 **August 12, 2008**.



Bernadette C. O. Molina
Case Administrator
State Bar Court