PUBLIC MATTER

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL
RUSSELL G. WEINER, No. 94504
INTERIM CHIEF TRIAL COUNSEL
PATSY COBB, No. 107793
DEPUTY CHIEF TRIAL COUNSEL
LAWRENCE J. DAL CERRO, No. 104342
ASSISTANT CHIEF TRIAL COUNSEL
DONALD STEEDMAN, No. 104927
SUPERVISING TRIAL COUNSEL
ROBERT A. HENDERSON, No. 173205
DEPUTY TRIAL COUNSEL
SHERRIE B. MCLETCHIE, No. 85447
ASSIGNED DEPUTY TRIAL COUNSEL
180 Howard Street
San Francisco, California 94105
Telephone: (415) 538-2297

THE STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	) Case Nos. 05-O-04119 [06-O-14935; 07-O-12717; 07-O-14195]-PEM
STANLEY G. HILTON, No. 65990,	)
A Member of the State Bar.	) NOTICE OF DISCIPLINARY CHARGES

NOTICE - FAILURE TO RESPOND!

IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.

STATE BAR RULES REQUIRE YOU TO FILE YOUR WRITTEN RESPONSE TO THIS NOTICE WITHIN TWENTY DAYS AFTER SERVICE.

IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD

OF ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE BAR COURT HAS GRANTED, A MOTION FOR TERMINATION OF THE ACTUAL SUSPENSION. AS A CONDITION FOR TERMINATING THE ACTUAL SUSPENSION, THE STATE BAR COURT MAY PLACE YOU ON PROBATION AND REQUIRE YOU TO COMPLY WITH SUCH CONDITIONS OF PROBATION AS THE STATE BAR COURT DEEMS APPROPRIATE. SEE RULE 205, RULES OF PROCEDURE FOR STATE BAR COURT PROCEEDINGS.

The State Bar of California alleges:

JURISDICTION

1. Stanley G. Hilton ("Respondent") was admitted to the practice of law in the State of California on December 18, 1975, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

COUNT ONE (A)

Case Nos. 05-O-04119 & 07-O-12717 (Paula Datesh)
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

2. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

3. On or about August 25, 2005, Paula Datesh ("Datesh") hired respondent to obtain a San Francisco street vendor's permit, entered into a written fee agreement with respondent, and paid respondent advanced fees of $850. On or about August 28, 2005, Datesh paid respondent an additional $400 in advanced fees for a total of $1,250 paid to respondent.

4. On or about September 1, 2005, Datesh and respondent spoke by telephone at which time Datesh told respondent that his services were terminated. As of the time of their September 1, 2005 telephone conversation, respondent had performed no services for Datesh except participating in their brief initial meeting, reviewing the documents Datesh had provided him, and sending a two-sentence letter to a deputy city attorney advising that he "still" represented Datesh and requesting the deputy to call him.

5. Thereafter, but also on or about September 1, 2005, respondent, through his employee James Chaffee ("Chaffee"), notified Datesh by e-mail, that on or about September 6, 2005, she could pick up her file and an accounting of work performed and a refund of unearned fees.

6. On or about September 2, 2005, Datesh sent respondent an e-mail through Chaffee which requested a full refund of the advanced fees. Respondent received Datesh's September 2, 2005 e-mail.

7. Also on or about September 2, 2005, respondent through Chaffee again notified Datesh by e-mail, that on or about September 6, 2005, she could pick up her file, an accounting of work performed, and a refund of unearned fees.

8. On or about September 5, 2005, Datesh once again notified respondent that his services had been terminated and requested a refund of the advanced fees. Respondent received Datesh's September 5, 2005 e-mail.

9. On or about September 5, 2005, respondent e-mailed Datesh and informed her that he had a contract, would bill his time, and refund the balance of unearned fees.

10. On September 5, 2005, respondent sent Datesh by regular mail a purported accounting stating that he had performed three hours of work for Datesh at a rate of $250 per hour for a total of $750 and acknowledging "AMOUNT OF REFUND TO CLIENT OF UNUSED PORTION OF RETAINER $500". The envelope sent by regular mail did not enclose any refund or Datesh's client file.

11. Also on September 5, 2005, respondent attempted to send Datesh certified mail. The certified mailing was ultimately returned to respondent on or about December 19, 2005, marked by the US Postal service "unclaimed."

12. On or about September 7, 2005, respondent e-mailed Datesh. Respondent in his e-mail acknowledged that Datesh had terminated his services.

13. On or about September 7, 2005, Datesh submitted a complaint against respondent to the State Bar.

14. On or about September 14, 2005, respondent attempted to send Datesh her client file by certified mail. The certified mailing was ultimately returned to respondent on or about December 26, 2005, marked by the US Postal service "unclaimed."

15. On or about December 8, 2005, the State Bar notified respondent, through his attorney Doron Weinberg ("Weinberg"), of Datesh's complaint against respondent.

16. From December 19, 2005, through March 6, 2006, respondent did not refund any unearned fees to Datesh.

17. On or about March 7, 2006, respondent refunded $500 to Datesh via Bank of America cashier's check number 412948683.

18. On or about May 17, 2007, an arbitrator issued his Findings and Award in the fee dispute between respondent and Datesh. The arbitrator awarded Datesh $750 in addition to the $500 respondent had already refunded. This arbitration award subsequently became binding on and enforceable against respondent.

19. On or about May 22, 2007, respondent and Datesh were notified of the arbitrator's Findings and Award dated May 17, 2007.

20. On or about July 10, 2007, respondent wrote personal check number 4339, payable to Datesh in the amount of $750. Check number 4339 bore the date June 27, 2007.

21. On or about July 26, 2007, respondent notified Bank of America that his checks for the account on which check number 4339 was written were missing.

22. On or about July 27, 2007, respondent attempted to close his personal account at Bank of America on which he wrote check number 4339 made payable to Datesh.

23. On or about July 27, 2007, Datesh attempted to negotiate respondent's check number 4339. Check number 4339 was not honored by Datesh's bank, which caused her to incur a $5 returned item fee. The check was stamped by Datesh's bank "Payment Stopped."

24. On or about August 5, 2007, Datesh notified the State Bar that respondent's check number 4339 had not been honored.

25. On or about August 5, 2007, the State Bar notified Weinberg that respondent's check number 4339 had not been honored.

26. On or about August 7, 2007, respondent purchased Bank of America cashier's check number 417821962 in the amount of $750 made payable to Datesh.

27. On or about August 11, 2007, Datesh received respondent's Bank of America cashier's check no. 417821962 in the amount of $750.

28. Respondent provided no services of value to Datesh. Respondent did not earn any of the advanced fees paid by Datesh.

29. By not refunding the unearned $1,250 in advanced fees to Datesh which she requested on September 1, 2005, until March 7, 2006, and August 7, 2007, respondent failed to promptly refund unearned fees.

COUNT ONE (B)

Case Nos. 05-O-04119 & 07-O-12717 (Paula Datesh)
Business and Professions Code, section 6106
[Moral Turpitude]

30. Respondent wilfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty and corruption, as follows:

31. The allegations contained in Count One (A) are hereby incorporated by reference.

32. Respondent caused check number 4339 to be dishonored without ensuring that Datesh received a replacement check.

33. By causing check number 4339 to be dishonored without ensuring that Datesh received a replacement check, respondent committed an act involving moral turpitude, dishonesty and corruption.

COUNT TWO (A)

Case No. 06-O-14935 (SBI)
Business and Professions Code, section 6068(d)
[Employing Means Inconsistent with Truth]
[Seeking to Mislead a Judge]

34. Respondent wilfully violated Business and Professions Code, section 6068(d), by employing, for the purposes of maintaining the causes confided in him, means which are inconsistent with truth, and by seeking to mislead the judge or judicial officer by an artifice or false statement of fact or law, as follows:

35. In or about September 2005 and thereafter for all times relevant to this Notice of Disciplinary Charges ("NDC") respondent represented Pura Advincula ("Advincula") in *Advincula v. Infinera,* Santa Clara County Superior Court case number 1-05-CV038064.

36. In or about September 2005, the deposition of Advincula was noticed for October 12, 2005. Respondent claimed a scheduling conflict and rescheduled the deposition to commence on January 13, 2006, and to continue thereafter on January 16, 2006.

37. On or about January 11, 2006, respondent again claimed a scheduling conflict and rescheduled the deposition to commence on February 20, 2006. At the time of the January 11, 2006 rescheduling opposing counsel notified respondent that should Advincula fail to appear for deposition on February 20, 2006, a motion would be brought to compel her attendance.

38. On or about February 20, 2006, respondent arrived approximately forty minutes late for the first day of Advincula's deposition. Respondent stopped the deposition of Advincula early claiming that he did not feel well. Respondent and opposing counsel agreed that the deposition would resume on March 3, 2006.

39. On or about March 3, 2006, respondent arrived approximately sixty minutes late for the second day of Advincula's deposition. Respondent returned from lunch approximately fifteen minutes late. Respondent and opposing counsel agreed that the deposition would resume on March 20, 2006.

40. On or about March 20, 2006, respondent arrived approximately fifty minutes late for Advincula's deposition. Thereafter respondent made various rude and/or false comments to and about opposing counsel. After announcing that he needed to take an hour and a half lunch break, respondent took two hours for lunch. Once again respondent stopped the deposition of Advincula early, this time claiming knee pain. Respondent and opposing counsel agreed that Advincula's deposition would continue on April 17, 2006.

41. On or about April 16, 2006, at 9:00 p.m., respondent left a voice-mail message for opposing counsel regarding the deposition scheduled for the following morning. Respondent, coughing and claiming illness, postponed the deposition for two days. In truth and in fact, a postponement was not required due to respondent's ill health, as evidenced by respondent

leaving a further unintended message with opposing counsel wherein respondent laughed, and repeatedly shouted "fuck you man" in a voice different from the one in which the intended message was left.

42. On or about April 17, 2006, respondent's office staff -- pursuant to respondent's direction -- informed opposing counsel that despite respondent's representations of the previous night, that respondent would be unavailable to attend Advincula's deposition until May 2, 2006. Opposing counsel agreed that the deposition be continued until May 2, 2006.

43. On or about May 2, 2006, respondent arrived approximately forty-five minutes late for the fourth day of Advincula's deposition.

44. On or about June 5, 2006, respondent left a voice-mail message for opposing counsel stating: "Ray, this is Stanley Hilton. Cancel all depositions. I'm resigning from the bar tomorrow. I'm not going to be practicing law. No depositions. Advincula will have to get another lawyer. Just letting you know. Good bye."

45. Respondent did not resign from the State Bar on June 6, 2006. In truth and in fact, respondent intended to avoid depositions scheduled for June 6 and 7, 2006, in *Advincula v. Infinera.*

46. On or about July 10, 2006, opposing counsel filed a properly noticed Motion for Protective Order and Request for Monetary Sanctions ("sanction motion"). Respondent received the sanction motion.

47. On or about September 8, 2006, respondent testified at the hearing on the sanction motion. When questioned regarding his April 16, 2006 message to opposing counsel respondent testified: "I wasn't coughing. Nobody coughs all the time. The phone was hung up. That comment was not intended for Mr. Hixson in any way." In truth and in fact, respondent was not so ill as to prevent him from attending Advincula's deposition scheduled for April 17, 2006.

48. Respondent also testified at the September 8, 2006 sanction motion hearing regarding his June 5, 2006 telephone call to opposing counsel that: "At the time I was – I had what I thought was an opportunity to work in Europe, and as a consequence I was – that was my intent at the time. And so, that is certainly one of the things. The reason for the call was simply

to give him a head's up out of courtesy that that's what I was contemplating so that he would not have to, you know, cancel things at the last moment. That was my intent at the moment." In truth and in fact, respondent did not make the June 5, 2006 telephone call to opposing counsel out of courtesy.

49. On or about September 8, 2006, the Honorable Socrates P. Manoukian heard the sanction motion which was based on respondent's conduct in postponing and cancelling depositions in *Advincula v. Infinera*, specifically the misrepresentations made on April 16, 2006, and June 5, 2006. Judge Manoukian sanctioned respondent in the sum of $7,552.50, which sum was to be paid solely by respondent. Judge Manoukian's orders on the sanctions motion were signed on September 18, 2006, and filed on September 19, 2006.

50. Sometime after September 19, 2006, respondent attempted to disqualify Judge Manoukian by filing a motion alleging judicial bias. Respondent had no basis for alleging judicial bias against Judge Manoukian. Another judge heard the motion. The motion was denied. The motion had no merit whatsoever.

51. By repeatedly postponing and canceling the deposition of Advincula and by claiming when canceling the deposition of Advincula on April 16, 2006, that he was ill and by claiming when canceling the deposition of Advincula on June 5, 2006, that he was resigning from the State Bar, by claiming to Judge Manoukian on September 8, 2006, that he was ill when he made the April 16, 2006 telephone call, and that he did intend to resign when he made the June 5, 2006 telephone call, and by alleging judicial bias on the part of Judge Manoukian with no basis for making the allegation, respondent failed to use means consistent with truth and sought to mislead a judge or judicial officer by an artifice or false statement of fact or law.

COUNT TWO (B)

Case No. 06-O-14935 (SBI)
Business and Professions Code, section 6106
[Moral Turpitude]

52. Respondent wilfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty and corruption, as follows:

53. The allegations contained in Count Two (A) are hereby incorporated by reference.

54. Respondent misrepresented to opposing counsel and Judge Manoukian the reason he did not appear at the Advincula deposition scheduled for April 17, 2006.

55. Respondent misrepresented to opposing counsel and Judge Manoukian the reason he did not appear at the depositions scheduled for June 6 and 7, 2006.

56. By misrepresenting the reasons he did not attend the deposition of Advincula on April 17, 2006, and by misrepresenting the reason he did not attend the depositions scheduled for June 6 and 7, 2006, respondent committed acts involving moral turpitude, dishonesty and corruption.

COUNT TWO (C)

Case No. 06-O-14935 (SBI)
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

57. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, and repeatedly failing to perform legal services with competence, as follows:

58. The allegations contained in Count Two (A) are hereby incorporated by reference.

59. The allegations contained in Count Two (B) are hereby incorporated by reference.

60. By repeatedly postponing and canceling the deposition of Advincula, by arriving late for the start of these depositions and late after the lunch break, by claiming he was ill when he was not, by stating that he intended to resign from the bar the following day when he did not, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence.

COUNT THREE (A)

Case No. 07-O-14195
Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

61. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3), by failing to render appropriate accounts to a client regarding all funds of the client coming into respondent's possession, as follows:

62. On or about September 16, 2005, Richard and Ann Newman ("the Newmans") hired respondent in a case involving credit card identity theft. Thereafter the Newmans paid respondent $6,000 in advanced fees.

63. On or about October 21, 2005, respondent certified that he represented the Newmans in a suit against MBNA, Capital One Bank, Chase, Discover, First USA Bank, and Bank of America.

64. On or about December 29, 2005, respondent filed *Dick Newman, Ann Newman, and the Class of Persons Similarly Situated vs. Capital One Services, Inc.; Trans Union LLC; Equifax, Inc.; Experian Services Corp.; Bank of America Corporation; JPMorgan Chase & Co.; MBNA Marketing Systems, Inc.; Discover Financial Services, Inc.; First USA Bank, A Bank One Company; Cavalry Portfolio Services, LLC; David A. Bauer* case no. C0505409 in U.S. District Court for the Northern District of California. Respondent served the suit on Capital One, TransUnion, and Bank of America. Respondent failed to serve the suit on any other identified defendant.

65. On or about January 3, 2006, the Newmans e-mailed respondent. They asked about why the lawsuit named MBNA and what the underlying legal theory was. They also asked how they were going to avoid the statute of limitations issue. Respondent received this e-mail.

66. On or about January 12, 2006, respondent e-mailed the Newmans stating that the "case has been served on defendants." In fact the case had not been served on all of the named defendants. In fact respondent knew that the case had not been served on all of the named defendants.

67. On or about January 12, 2006, respondent e-mailed the Newmans. Respondent told the Newmans in his e-mail that the Continuous Tort Theory should get around the problem with the Statute of Limitations.

68. On or about January 14, 2006, respondent e-mailed the Newmans. Respondent told the Newmans in his e-mail that: "the case has been served on all these defendants and their lawyers are calling me."

69. On or about January 21, 2006, respondent e-mailed the Newmans. In his e-mail respondent stated: "We have gotten the complaint and summons served on defendants." In truth and in fact respondent had not served all of the named defendants. In truth and in fact respondent knew that not all of the named defendants had been served.

70. On or about January 26, 2006, respondent e-mailed the Newmans. In his e-mail respondent stated: "all defendants have been served and their lawyers are calling me." In truth and in fact respondent had not served all of the named defendants. In truth and in fact respondent knew that not all of the named defendants had been served.

71. On or about February 5, 2006, respondent e-mailed the Newmans. In his e-mail respondent stated: "Virtually all the defendants are seeking extra time to respond to our complaint, Dick. Looks like they're worried." In truth and in fact respondent had not served all of the named defendants. In truth and in fact respondent knew that not all of the named defendants had been served. In truth and in fact respondent had been contacted by only a few of the defendants.

72. On or about March 7, 2006, counsel for Capital One e-mailed respondent. In the e-mail opposing counsel stated: "We have been trying to get a hold of you for months now, but your voice mail appears to be out of operation and you have not responded to our letters. . . ¶Although we have a motion to dismiss pending, Capital One is still interested in investigating your clients' dispute. . .Would you please provide us the account number at issue so we can investigate your clients' dispute?" Respondent received this e-mail.

73. On or about May 13, 2006, respondent e-mailed the Newmans. In his e-mail respondent informed the Newmans that the hearing on Capital One's Motion to Dismiss had been continued from May 2, 2006 to June 2, 2006.

74. On or about May 13, 2006, the Newmans responded to respondent's May 13, 2006, e-mail. In their e-mail they asked: "On what grounds are they wanting to dismiss? What are the odds they would be successful . . .?" Respondent received this e-mail.

75. On or about June 3, 2006, respondent e-mailed the Newmans. Respondent in his e-mail claimed the hearing on Capital One's Motion to dismiss went "great."

76. On or about July 13, 2006, counsel for Capital One and Bank of America e-mailed respondent a global settlement offer of $4,000. Counsel for Capital One made clear that they viewed the offer as generous and that the $4,000 was merely an attempt to save litigation costs. Respondent received this e-mail.

77. On or about July 13, 2006, respondent e-mailed the Newmans. Respondent in his e-mail stated: BOA and Capital One Offer $4000 to settle the case."

78. On or about July 27, 2006, counsel for Bank of America e-mailed respondent. Counsel for Bank of America informed respondent that of the $4,000 offered on July 13, 2006, $2,000 was offered by Bank of America. Counsel for Bank of America further notified respondent that if the offer was not accepted by 5:00 p.m. PST August 4, 2006, it would be withdrawn. Respondent received this e-mail.

79. On or about July 27, 2006, respondent e-mailed the Newmans. In his e-mail respondent notified the Newmans that: "The original $6K retainer has now been exhausted."

80. On or about July 29, 2006, counsel for Capital One e-mailed respondent. Counsel for Capital One confirmed for respondent that the $4,000 offer would be withdrawn on August 4, 2006. Respondent received this e-mail.

81. On or about July 30, 2006, the Newmans authorized settlement with the defendants for $4,000 and requested an accounting from respondent for the $6,000 in advanced fees. Respondent received this request.

82. On or about August 1, 2006, respondent e-mailed the Newmans. In his e-mail respondent stated that he would be: "glad to give you an accounting. . ."

83. On or about August 7, 2006, the Newmans e-mailed respondent. In the e-mail the Newmans renewed their request for a detailed billing. Respondent received this e-mail.

84. On or about August 7, 2006, respondent e-mailed the Newmans. In his e-mail respondent stated: "On billing I am old school, I use ledgers, not computers."

85. On or about August 22, 2006, the Newmans e-mailed respondent. In the e-mail the Newmans asked about the accounting they had requested. Respondent received this e-mail.

86. On or about August 22, 2006, respondent e-mailed the Newmans. In his e-mail respondent stated that he was preparing an accounting. Up to and including August 22, 2006, respondent did not provide an accounting of the $6,000 in advanced fees as requested by the Newmans on July 30, 2006.

87. On or about November 29, 2006, respondent e-mailed the Newmans. In his e-mail respondent stated: "will send full accounting next week."

88. On or about November 29, 2006, the Newmans e-mailed respondent. In the e-mail they stated: "You still haven't given us any idea of where the $6K went. This request for an accounting was made clear back in July of this year. . ." Respondent received this e-mail.

89. On or about November 29, 2006, respondent e-mailed the Newmans. In his e-mail respondent stated: "I will send you full accounting when I return Dec 6 . . ."

90. Up to and including January 2, 2007, respondent never provided an accounting for the $6,000 in advanced fees received from the Newmans.

91. On or about January 3, 2007, respondent provided the Newmans the accounting requested on July 30, 2006. The accounting claimed $15,075 in legal fees and $1,780.70 in costs in the Newmans' matter.

92. On or about March 25, 2007, respondent and the Newmans modified their contract to a contingency fee agreement. Respondent was to retain 50% of any recovery in the filed matter. In exchange for the modification both respondent and the Newmans dropped their respective claims regarding fees owed or not owed.

93. On or about August 2, 2007, respondent e-mailed the Newmans. In his e-mail respondent notified the Newmans that Capital One had offered $3,500 to settle the case. He also notified the Newmans that the defendants had filed a Motion to Dismiss and for Sanctions which was to be heard on August 6, 2007.

94. On or about August 2, 2007, the Newmans e-mailed respondent. They accepted the offer from Capital One. Respondent received this e-mail.

95. On or about August 20, 2007, respondent e-mailed the settlement agreement with Capital One to the Newmans.

96. On or about August 20, 2007, the Newmans e-mailed respondent. They asked: "What about the other defendants? Nothing is mentioned about them...or have they previously been dismissed by the judge?" Respondent received this e-mail.

97. On or about August 21, 2007, the Newmans e-mailed respondent. In the e-mail they asked what happened to the other defendants in their case. Respondent received this e-mail.

98. On or about August 21, 2007, respondent e-mailed the Newmans. In his e-mail respondent wrote: "only capitrol [sic] one is williong [sic] to pay you anything to settle[.] ¶the other defendants offer only a mutual general release, waiver of any costs and atty fees claims against you. ¶RX settle for that as our strongest case was against cap one."

99. On or about September 7, 2007, respondent e-mailed two mutual releases to the Newmans for TransUnion and Bank of America. The Newmans e-mailed the signed releases back and asked "Where are the others?" Respondent replied: "Which others?"

100. On or about September 21, 2007, respondent sent the Newmans the $3,500 settlement check from Capital One.

101. On or about September 25, 2007, the Newmans e-mailed respondent. They asked respondent where the releases were for the remaining defendants. Respondent received this e-mail.

102. On or about September 25, 2007, respondent e-mailed the Newmans. In his e-mail respondent stated that he would look into where the other releases were for the remaining defendants.

103. On or about September 27, 2007, respondent e-mailed the Newmans. In his e-mail respondent stated: "As to the other defendants, I am getting the orders to send you but my understanding is they were dismissed per judge." In truth and in fact the remaining defendants had never been served. In truth and in fact respondent knew, or should have known, that he had never served the remaining defendants.

104. On or about September 27, 2007, the Newmans e-mailed respondent. They asked respondent how it was that 3/4 of the defendants had been dismissed without their learning of the dismissals. Respondent received this e-mail.

105. On or about September 28, 2007, respondent e-mailed the Newmans. In his e-mail respondent claimed that: "The case is still alive for 3/4 defendants." Later on this date respondent sent another e-mail and stated: "The 3/4 defendants you mentioned were not dismissed. They are still technically in the case. Evidentlyn [sic] there were problems serving them."

106. On or about September 30, 2007, respondent e-mailed the Newmans. In his e-mail respondent stated: "For your information, the issues involved with the other defendants were the same as with the spearhead defendants we settled with. Thus thew [sic] results would have been the same."

107. On or about October 1, 2007, respondent e-mailed the Newmans. In his e-mail respondent stated: ". . .I believe that further pursuit of the remaining defendants in this case by serving and prosecuting them would be futile and meritless. . . As such, I don't think I am legally bound to serve defendants whose liability has basically been denied by the court per prior rulings."

108. On or about October 7, 2007, respondent e-mailed the Newmans. In his e-mail respondent stated: "I have told you the case is finished, the judge has closed the file. You have no exposure to any of the unserved defendants because they have incurred no costs."

109. On or about October 10, 2007, respondent e-mailed the Newmans. In his e-mail respondent stated: "I am willing to send mutual releases to all the unserved defendants."

110. To date the unserved defendants remain named in the suit filed by respondent.

111. By failing to provide an accounting of the $6,000 in advanced fees as requested by the Newmans on July 30, 2006, until January 2, 2007, respondent failed to promptly render appropriate accounts to a client regarding all funds of the client coming into respondent's possession.

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COUNT THREE (B)

Case No. 07-O-14195
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

112. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

113. The allegations contained in Count Three (A) are hereby incorporated by reference.

114. On or about December 29, 2005, respondent filed *Dick Newman, Ann Newman, and the Class of Persons Similarly Situated vs. Capital One Services, Inc.; Trans Union LLC; Equifax, Inc.; Experian Services Corp.; Bank of America Corporation; JPMorgan Chase & Co.; MBNA Marketing Systems, Inc.; Discover Financial Services, Inc.; First USA Bank, A Bank One Company; Cavalry Portfolio Services, LLC; David A. Bauer* case no. C0505409 in U.S. District Court for the Northern District of California. Respondent served the suit on Capital One, TransUnion, and Bank of America. Respondent failed to serve the suit on any other identified defendant.

115. Between on or about December 29, 2005 and at least October 7, 2007, respondent failed to serve the complaint on Equifax, Inc.; Experian Services Corp.; JPMorgan Chase & Co.; Discover Financial Services, Inc.; First USA Bank, A Bank One Company; Cavalry Portfolio Services, LLC; and David A. Bauer.

116. By failing to file the complaint on all of the defendants, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence.

COUNT THREE (C)

Case No. 07-O-14195
Business and Professions Code, section 6068(m)
[Failure to Inform Client of Significant Development]

117. Respondent wilfully violated Business and Professions Code, section 6068(m), by failing to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, as follows:

118. The allegations contained in Count Three (A) are hereby incorporated by reference.

119. The allegations contained in Count Three (B) are hereby incorporated by reference.

120. By not informing the Newmans that he had failed to serve the complaint on Equifax, Inc.; Experian Services Corp.; JPMorgan Chase & Co.; Discover Financial Services, Inc.; First USA Bank, A Bank One Company; Cavalry Portfolio Services, LLC; and David A. Bauer, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services.

COUNT THREE (D)

Case No. 07-O-14195
Business and Professions Code, section 6106
[Moral Turpitude]

121. Respondent wilfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty and corruption, as follows:

122. The allegations contained in Count Three (A) are hereby incorporated by reference.

123. The allegations contained in Count Three (B) are hereby incorporated by reference.

124. Respondent intentionally or with gross negligence led the Newmans to believe that all of the defendants had been served in case no. C0505409.

125. Respondent intentionally or with gross negligence led the Newmans to believe that all of the defendants except Capital One, Bank of America, and Transunion had been dismissed by order of the court in case no. C0505409.

126. Respondent intentionally or with gross negligence led the Newmans to believe that Equifax, Inc.; Experian Services Corp.; JPMorgan Chase & Co.; Discover Financial Services, Inc.; First USA Bank, A Bank One Company; Cavalry Portfolio Services, LLC; and David A. Bauer had been dismissed from case no. C0505409.

127. In truth and in fact not all of the defendants were served with the complaint.

128. In truth and in fact none of the defendants were dismissed pursuant to a court order.

129. Eventually a Mutual Release was executed by the Newmans with Transunion LLC; Bank of America and FIA Card Services; and Capital One.

130. By misrepresenting to the Newmans that he had served all of the defendants in case no. C0505409 and by misrepresenting to the Newmans that all defendants but Transunion LLC; Bank of America and FIA Card Services; and Capital One had been dismissed by order of the court, respondent committed an act involving moral turpitude, dishonesty and corruption.

NOTICE - INACTIVE ENROLLMENT!

YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT. SEE RULE 101(c), RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

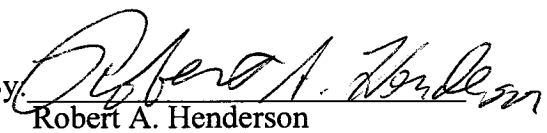
NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10. SEE RULE 280, RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

Dated: September 29, 2009

By: 
Robert A. Henderson
Deputy Trial Counsel

DECLARATION OF SERVICE BY CERTIFIED MAIL

CASE NUMBERS: 05-O-04119 [06-O-14935; 07-O-12717; 07-O-14195]-PEM

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco, on the date shown below, a true copy of the within

NOTICE OF DISCIPLINARY CHARGES

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: **7160 3901 9845 9595 3235**, at San Francisco, on the date shown below, addressed to:

William M. Balin, Esq.
345 Franklin Street
San Francisco CA 94102

Counsel for Respondent

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

DATED: September 29, 2009

SIGNED: _____
Mazie Yip
Declarant