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State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar Lee Ann Kern Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015-2299 Telephone: (213) 765-1272  Bar #            156623	Case number(s)  03-O-04967	(for Court's use)  <div style="text-align: center;"> <b>FILED</b>   <b>SEP 15 2006</b> <i>HC</i>             STATE BAR COURT            CLERK'S OFFICE            LOS ANGELES         </div> <div style="text-align: center; font-size: 2em; font-weight: bold;">PUBLIC MATTER</div>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent  Jeffrey N. Garland 1202 Kettner Blvd. 3 <sup>rd</sup> floor San Diego, CA 92101  Bar #            61229	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND            DISPOSITION AND ORDER APPROVING</b>  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of Jon Robert Kurtin  Bar #            95454  A Member of the State Bar of California (Respondent)	(This section is merged into the previous row's content for brevity and accuracy)	

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 16, 1980  
(date)
- (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 and order consist of 13 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.



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- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  **No aggravating circumstances** are involved.

Additional aggravating circumstances:

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

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- (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:**

**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 three years, which will commence upon the effective date of the Supreme Court order in this matter.  
(See rule 953, Calif. Rules of Ct.)

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(3)  **Actual Suspension:**

(a)  Respondent must be actually suspended from the practice of law in the State of California for a period of thirty days

i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii.  and until Respondent does the following: \_\_\_\_\_

**E. Additional Conditions of Probation:**

(1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

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

(3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(4)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

(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.

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- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: \_\_\_\_\_
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

#### F. Other Conditions Negotiated by the Parties:

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason: \_\_\_\_\_
- (2)  **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3)  **Conditional Rule 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, 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: \_\_\_\_\_
- (5)  **Other Conditions:**

**ATTACHMENT TO**

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:        JON ROBERT KURTIN

CASE NUMBER(S):        03-O-04967

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes.

**COUNT ONE**            Business and Professions Code, section 6106  
                                 [Moral Turpitude - Knowingly Signing False Affidavit]

1. In or about 1997, SunCal Companies ("SunCal") entered into an agreement to purchase the Carlsbad Raceway ("the property") in the City of Carlsbad for \$6 million. Pursuant to the Purchase Agreement ("the agreement"), the seller was to take back a first trust deed for a portion of the sales price and SunCal would then seek financing for the balance of the sales price, as well as for the development of the property. The original closing date for the purchase of the property was March 3, 1998.
2. The agreement gave SunCal the right to form an entity to be the buyer of the property and on January 10, 1998, SunCal formed Raceway Properties, LLC ("Raceway") to act as the buyer. At the time of Raceway's formation in early 1998, Respondent, who is a licensed real estate broker, became one of the original members of Raceway.
3. In February 1998, Raceway was in negotiations with Lone Star Opportunity Fund ("LSOF"), a Dallas investment group, to form a joint venture to purchase and develop the property. During the negotiations, Raceway agreed that they would not seek funding from any other source. Respondent was not involved in the negotiations.
4. By February 18, 1998, the joint venture between Raceway and LSOF had not yet been finalized and therefore Raceway requested that the seller extend the closing date for the purchase of the property. The seller agreed to extend the closing date to March 24, 1998, on the condition that Raceway put up an additional \$100,000 deposit and that its entire \$300,000 deposit would be non-refundable.
5. In early March 1998, after Raceway agreed to the new terms of the deposit with the seller, LSOF informed Raceway that LSOF wanted to change the structure of their investment from a

joint venture to a loan. On March 10, 1998, LSOF informed Raceway of the terms of their proposed loan, which included interest of 30%, penalty interest of 32%, an annual management fee of \$72,000 per year, and a share of the profits from the development of the property. LSOF gave Raceway one day to accept or reject the proposal.

6. In or about mid March 1998, Raceway accepted the terms of LSOF's loan because the closing date was drawing near and because rejecting LSOF's terms meant that Raceway would forfeit its \$300,000 deposit. Respondent was not involved in the negotiations regarding the loan.

7. In or about March 1998, LSOF's attorney, Bruce Greene ("Greene"), sent a facsimile to SunCal's counsel in which it asked SunCal to locate a licensed real estate broker. SunCal understood from that facsimile that in order to avoid California's usury laws, LSOF needed an affidavit from a real estate broker stating, among other things, that the broker had been active in arranging the transaction and had reviewed the terms of the loan. At or about that time, SunCal's counsel informed Greene that Respondent was a licensed real estate broker.

8. On March 20, 1998, Greene prepared, or caused to be prepared, the broker's affidavit for Respondent's signature. Green then provided the affidavit and loan documents to the escrow office for signatures by the principals for SunCal and Raceway, including Respondent.

9. On March 23, 1998, Respondent went to the escrow office where he saw the loan documents and the broker's affidavit for the first time. The broker's affidavit, which was dated March 20, 1998, stated in pertinent part:

"I have, since the commencement of the discussion leading to the Loan, made the arrangements for the Loan for Borrower. My activities in arranging the Loan have included active involvement in the review and negotiation of the terms of the Loan. I have also expended substantial time in connection with the submission of the information regarding the Loan, the Loan closing and the documentation thereof."

10. On March 23, 1998, while he was still sat the escrow office, Respondent had a telephone conversation with Greene and informed him, in substance, that the affidavit was false, that Respondent had not been involved in arranging the loan, that Respondent was not involved with the transaction since its commencement, that Respondent had not been involved in any negotiations regarding the loan, and that Respondent had not spent any time, much less substantial time, in regard to the loan. Greene then told Respondent that if Respondent did not sign the broker's affidavit, the loan would not fund.

11. On March 23, 1998, Respondent signed the affidavit under penalty of perjury and Raceway received the loan from LSOF.



12. LEGAL CONCLUSION: By signing the broker's affidavit under penalty of perjury when he knew the contents of the document to be false, Respondent committed an act involving moral turpitude, dishonesty or corruption, in wilful violation of Business and Professions Code, section 6106.

COUNT TWO Business and Professions Code, section 6090.5(a)(2)  
[Seeking an Agreement to Withdraw a State Bar Complaint]

13. The allegations of paragraphs 1 through 12 are incorporated by reference.

14. On July 12, 2002, Raceway properties brought an action in the United States District Court against LSOF and others, including Greene and John Dell ("Dell"), General Counsel for LSOF, for claims relating to, among other things, LSOF's loan to Raceway.

15. On October 31, 2003, LSOF filed a complaint in the San Diego Superior Court against Raceway and others, including Respondent. Raceway and the others filed a cross-complaint against LSOF and the others. The Superior Court complaint and cross-complaint also related to LSOF's loan to Raceway.

16. On November 11, 2003, J.D. Dell, General Counsel for LSOF, filed a State Bar complaint against Respondent relating to Respondent's endorsement of the false broker's affidavit.

17. In or about April 2006, the majority of the parties to the lawsuits set forth in paragraphs 14 and 15, including Respondent, Dell, and Greene entered into a written settlement agreement and release of all claims ("the release") wherein they settled the claims relating to those lawsuits. In paragraph 3 of the release, LSOF agreed to withdraw its State Bar complaint against Respondent not more than 30 days after execution of the Release by all parties.

18. In or about April 2006, the parties to the lawsuits, including Respondent, Greene, and Dell signed the release and on April 21, 2006, LSOF sent a letter to the State Bar withdrawing LSOF's complaint against Respondent.

19. LEGAL CONCLUSION: By entering into an agreement with LSOF, Dell, and Greene whereby the State Bar complaint against Respondent would be withdrawn upon the execution of a release by the parties to certain litigation to which Respondent was a defendant, Respondent agreed that a plaintiff would withdraw a disciplinary complaint, in wilful violation of Business and Professions Code, section 6090.5(a)(2).

#### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(7), was July 31, 2006.

## AUTHORITIES SUPPORTING DISCIPLINE.

### The Standards:

The Supreme Court gives the Standards "great weight," and will reject a recommendation consistent with the Standards only where the Court entertains "grave doubts" as to its propriety. (*In re Naney* (1990) 51 Cal.3d 186, 190; *In re Silverton* (2005) 36 Cal. 4th 81, 91-92.) Although the Standards are not mandatory, it is well established that the Standards may be deviated from only when there is a compelling, well-defined reason to do so. (See *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291; *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060, fn. 2.)

1.6(a) - If two or more acts of misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed for the acts, the sanction imposed shall be the more severe of the different applicable sanctions.

2.3 - Culpability of an act of moral turpitude shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed and depending upon the magnitude of the misconduct and the degree to which it relates to the member's acts within the practice of law.

### Case Law:

"A member of the State Bar 'should not under any circumstances attempt to deceive another person,' whether or not any harm is done, and an attorney's practice of deceit involves moral turpitude." (*In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844, 856, citing *Cutler v. State Bar* (1969) 71 Cal.2d 241, 252-253.)

The Supreme Court has noted an attorney's dishonesty violates "the fundamental rules of ethics -- that of common honesty-- without which the profession is worse than valueless in the place it holds in the administration of justice." (*Rhodes v. State Bar* (1989) 49 Cal.3d 50, 60.) The Supreme Court has consistently condemned attorney dishonesty. (*Sevin v. State Bar* (1973) 8 Cal.3d 641, 645-646 [misappropriation and fabricated loan agreement] and *Chang v. State Bar* (1989) 49 Cal.3d 114, 128 [misappropriation with fraudulent and contrived misrepresentations to State Bar]).

In *Wren v. State Bar* (1983) 34 Cal.3d 81, the attorney, in a single client matter, failed to communicate, misrepresented the status of the matter by, *inter alia*, giving the client a trial date when the action had not been filed. Wren was actually suspended for 45 days.

In *Drociak v. State Bar* (1991) 52 Cal.3d 1085, the attorney, who had no prior record of

discipline, was actually suspended for 30 days for violating Business and Professions Code sections 6068(d) and 6106 when he asked his client to pre-sign verifications, when he answered her interrogatories himself, and then attached one of the pre-signed verifications to her responses.

In the instant matter, the standards and the case law support the recommended discipline of 30-days actual suspension.




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In the Matter of  JON ROBERT KURTIN	Case number(s):  03-0-04967
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### SIGNATURE OF THE PARTIES

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

8/24/06 Date	 Respondent's signature	Jon Robert Kurtin Print name
8/24/06 Date	 Respondent's Counsel's signature	Jeffrey N. Garland Print name
8/25/06 Date	 Deputy Trial Counsel's signature	Lee Ann Kern Print name

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In the Matter of  JON ROBERT KURTIN	Case number(s):  03-0-04967
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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 953(a), California Rules of Court.)

Date

9-1-06

  
Judge of the State Bar Court

**ROBERT M. TALCOTT**

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**DECLARATION OF SERVICE BY REGULAR MAIL**

**CASE NUMBER: 03-O-04967**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, 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 Los Angeles, on the date shown below, a true copy of the within

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING**

in a sealed envelope placed for collection and mailing at Los Angeles, on the date shown below, addressed to:

**Jeffrey N. Garland  
1202 Kettner Blvd., 3<sup>rd</sup> floor  
San Diego, CA 92101**

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 Los Angeles, California, on the date shown below.

DATED: August 25, 2006

SIGNED: Lupe Pacheco-Granados  
Lupe Pacheco-Granados  
Declarant

**CERTIFICATE OF SERVICE**  
**[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]**

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 15, 2006, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
AND ORDER APPROVING ACTUAL SUSPENSION**

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

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

**JEFFREY N. GARLAND  
KIMBALL TIREY & ST JOHN  
1202 KETTNER BLVD 3FL  
SAN DIEGO, CA 92101**

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

**LEE ANN KERN, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **September 15, 2006.**



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**Tammy R. Cleaver**  
Case Administrator  
State Bar Court