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State Bar Court of California Hearing Department Los Angeles		
Counsel For The State Bar Larry DeSha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1336 Bar # 117910	Case Number (s) 06-O-14115-RAP <div style="text-align: center; font-size: 2em; font-weight: bold; opacity: 0.5;">PUBLIC MATTER</div>	(for Court's use) <div style="text-align: center;"> FILED AUG 18 2009 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Counsel For Respondent Lawrence S. Strauss 8447 Wilshire Blvd.; Ste. 204 Los Angeles, CA 90211 (310) 278-7555 Bar # 187652	Submitted to: Settlement Judge	
In the Matter Of: NEIL CYRIL NEWSON Bar # 41497 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 **January 5, 1968**.
- (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.
- (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: **2010, 2011, and 2012**
(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.
- (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. **See Stipulation Attachment, para. 14.**
- (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

D. Discipline:

(1) **Stayed Suspension:**

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

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **three (3) 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.
- (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 checked="" 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:**

Respondent must attach to each quarterly probation report a copy of the monthly reconciliation of his client trust account funds, as required by rule 4-100(C), for each of the months covered by the probation report.

During the second year of probation, the Office of Probation shall designate a past end of quarter date for which Respondent shall obtain an audit of that month's reconciliation of trust account funds by a Certified Public Accountant. This audit and report shall be at Respondent's expense, and the report shall be submitted to the Office of Probation within sixty (60) days after the Office of Probation notifies Respondent of the designated date to be audited.

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A Member of the State Bar	

Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

c. Client Funds Certificate

- 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
 - a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

(Financial Conditions form approved by SBC Executive Committee 10/16/2000. Revised 12/16/2004; 12/13/2006.)

- b. Respondent has kept and maintained the following:
- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: NEIL CYRIL NEWSON

CASE NO.: 06-O-14115-RAP

FACTS

1. On February 22, 2006, Respondent was hired by Amir Azarnivar, M.D. to substitute into a medical malpractice case in which Dr. Azarnivar was the plaintiff, alleging failures to render a proper diagnosis. Dr. Azarnivar advanced \$10,000.00 to Respondent for expert witness fees. Respondent promptly deposited the \$10,000.00 into his client trust account.

2. On February 27, 2006, Dr. Azarnivar notified Respondent that he had been sued in unlawful detainer by the landlord for his medical office, due to unpaid rent. A verified Answer was due to be filed within two days. Respondent told Dr. Azarnivar that he would defend the case. They agreed that Respondent could charge fees and costs for that defense to the \$10,000.00 on deposit, and that Dr. Azarnivar would pay additional sums as later billed for fees or requested for costs.

3. On March 7, 2006, Respondent refunded \$5,000.00 to Dr. Azarnivar because Respondent had learned that no suitable expert was available for the malpractice case.

4. Respondent defended the unlawful detainer case, but lost at trial on April 11, 2006. As of that date, he had not submitted a bill to Dr. Azarnivar, but he had worked on the case in excess of 20 hours and had spent about \$400 in costs.

5. On May 23, 2006, the parties settled the medical malpractice case. The defendants forgave Dr. Azarnivar for over \$200,000 which he owed the hospital for medical procedures performed there.

6. On June 1, 2006, Respondent sent Dr. Azarnivar a letter informing him that all legal services were completed. The letter stated that no additional fees were owed and that Respondent might be sending a "small refund shortly" after computing the bill for the unlawful detainer case.

7. On July 20, 2006, Dr. Azarnivar sent Respondent a letter demanding refund of the \$10,000.00 paid on February 22, 2006 for expert witness fees, and also demanding an itemized bill.

8. On July 27, 2006, Dr. Azarnivar complained to the State Bar that Respondent had failed to return the \$10,000.00.

9. On August 9, 2006, Respondent sent Dr. Azarnivar a letter apologizing for the delay, and promising to send a bill and an appropriate refund soon. Thereafter, Respondent never provided a bill or refund.

10. On October 11, 2006, the State Bar requested Respondent to provide the client trust account ledger for Dr. Azarnivar, the written journal for his client trust account since January 2006, and the related monthly reconciliations, all as required to be maintained by rule 4-100(C) of the Rules of Professional Conduct.

11. On November 8, 2006, Respondent admitted to the State Bar that he had no client trust account ledger for Dr. Azarnivar. Upon further inquiry, he admitted that he also did not maintain the written journal nor perform the monthly reconciliations required by rule 4-100(C).

12. On December 28, 2006, the State Bar advised Dr. Azarnivar that he should submit the refund issue to fee arbitration. Dr. Azarnivar has thus far failed to do so.

13. Respondent has not maintained financial records sufficient for preparing an accounting to Dr. Azarnivar for the unlawful detainer action.

14. This is the first imposition of discipline against Respondent since he began practicing law in California on January 5, 1968.

CONCLUSIONS OF LAW:

By failing to submit a final accounting to Dr. Azarnivar after the completion of all legal services by June 1, 2006, Respondent failed to render an appropriate account to the client regarding the client's funds in willful violation of rule 4-100(B)(3) of the California Rules of Professional Conduct.

By failing to maintain the written ledger for Dr. Azarnivar and a written journal for his client trust account as required by rule 4-100(C), and by failing to perform the monthly reconciliations of client trust account funds as also required by rule 4-100(C), Respondent failed to maintain, and to preserve for five years after final appropriate distribution, complete records of all client funds coming into his possession in willful violation of rule 4-100(B)(3) of the California Rules of Professional Conduct.

DISMISSALS:

The State Bar requests dismissal of Count One, alleging failure to maintain client funds in a trust account in violation of rule 4-100(A) of the California Rules of Professional Conduct, on the grounds of insufficient evidence. [Rule 262(a).]

The State Bar further requests dismissal of Count Two, alleging an act of moral turpitude by misappropriation of client funds in violation of Business and Professions Code section 6106, on the grounds of insufficient evidence. [Rule 262(a).]

WAIVER OF VARIANCE:

The parties waive any variance between the Notice of Disciplinary Charges filed on September 10, 2008 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

SUPPORTING AUTHORITY:

Standard 2.2(b) of the Standards for Attorney Sanctions for Professional Misconduct requires “at least a three month actual suspension . . . , irrespective of mitigating circumstances,” for a violation of rule 4-100 without willful misappropriation of entrusted funds.

Standard 1.6(b)(ii) permits a lesser degree of sanction where the mitigating circumstances, in balance with any aggravating circumstances, demonstrate that the purposes of imposing sanctions will be properly fulfilled if a lesser degree of sanction is imposed.

In the Matter of Blum (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403. Blum was found culpable of several misappropriations of client funds for which Standard 2.2(a) required a minimum actual suspension of one year. The Review Department recommended an actual suspension of only 30 days, and made clear that it deviated from the standard only because “we consider it unlikely that the misconduct will recur. *Id.*, at 413. Imposed probation conditions of continued psychiatric treatment increased the Review Department’s belief that recurrence was unlikely.

In view of Respondent’s 41 years without discipline, and the absence of aggravating factors, the State Bar agrees with Respondent that he is unlikely to commit another ethical violation, and that the lesser discipline of a stayed suspension of one year will fulfill the purposes of imposing sanctions.

PENDING PROCEEDINGS:

The disclosure date referred to on page 2, paragraph A.(7), was August 4, 2009.

COSTS:

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of August 4, 2009, the estimated prosecution costs in this matter are approximately \$3,654.00. Respondent acknowledges that this figure is an estimate only.

If Respondent fails to pay any installment within the time provided in paragraph A.(8) above or as modified by the State Bar Court pursuant to section 6068.10 (c), the remaining balance of costs will be due and payable immediately and enforceable as a money judgment unless relief is granted under rule 286 of the Rules of Procedure of the State Bar of California.

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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.

August , 2009
Date



Respondent's Signature

Neil Cyril Newson

Print Name

August 6, 2009
Date



Respondent's Counsel Signature

Lawrence S. Strauss

Print Name

August 6, 2009
Date



Deputy Trial Counsel's Signature

Larry DeSha

Print Name

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In the Matter Of NEIL CYRIL NEWSON	Case Number(s): 06-O-14115-RAP
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, ^{with} 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 membership years referred to in Paragraph A (8) is modified to read "2011, 2012, and 2013."

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.)**

8/18/09 _____ *W. Marshall*
Date Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 18, 2009, 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:

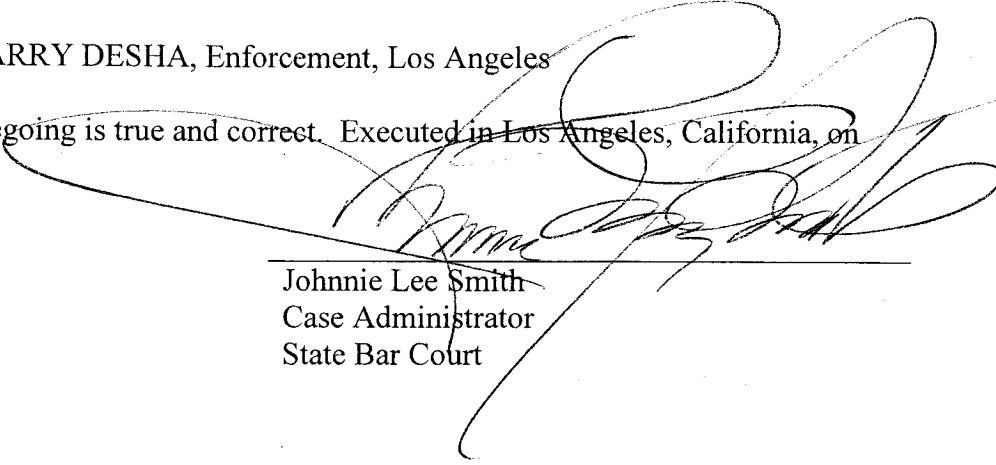
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

LAWRENCE S. STRAUSS
8447 WILSHIRE BLVD STE 204
BEVERLY HILLS, CA 90211

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

ERNEST LARRY DESHA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 18, 2009.



Johnnie Lee Smith
Case Administrator
State Bar Court