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11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SACRAMENTO

13 THOMAS G. DEL BECCARO, MARK A.
14 PRUNER, DAVID B. PRINCE, CARL A.
15 BURTON, and ADAM C. ABRAHMS,

16 Plaintiffs,

17 vs.

18 EDMUND GERALD "JERRY" BROWN JR., an
individual; BRUCE McPHERSON, Secretary of
State of the State of California; BILL LOCKYER,
19 Attorney General of the State of California;
STEVE WESTLY, Controller of the State of
20 California; and DOES 1-100, inclusive,

21 Defendants.

) No.: 06AS04494

) **REQUEST FOR JUDICIAL**
) **NOTICE; DECLARATION OF**
) **MARGARET R. PRINZING**

) Hearing:

) Date: February 9, 2007
) Time: 1:30 p.m.
) Dept: 11

) (The Honorable Gail D. Ohanesian)

1 **REQUEST FOR JUDICIAL NOTICE**

2 Pursuant to California Rules of Court Rule 3.1306(c) and California Evidence Code
3 sections 452 and 459, Defendant Edmund Gerald "Jerry" Brown Jr. requests that the Court take
4 judicial notice of the following:

5 Exhibit A: Excerpts from the *Statement of the Vote, 2006 General*
6 *Election, November 7, 2006*, compiled by Bruce McPherson, Secretary
of State (2006).

7 Exhibit B: California State Bar "Member Status Definitions."

8 Exhibit C: California State Bar "Request to Transfer to Active Status"
9 Form.

10 Exhibit D: California Attorney General Indexed Letter, Number IL 73-
41 (Feb. 27, 1973).

11 Exhibit E: California State Bar Certificate summarizing the records of
12 the State Bar for Marvin Ray Baxter, State Bar Number 38953.

13 Exhibit F: Article III of the Charter of the City of Oakland.

14 Exhibit G: California State Bar "Member Demographics."

15 Exhibit H: Excerpts from the *Statement of the Vote, 2006 Primary*
16 *Election, June 6, 2006*, compiled by Bruce McPherson, Secretary of
State (2006).

17 The Statements of the Vote (Exhibits A and H) are prepared and issued by the Secretary
18 of the State of California pursuant to Elections Code section 15501 to provide the certified totals of the
19 votes cast in state elections for various offices. The California State Bar "Member Status Definitions"
20 (Exhibit B); "Request to Transfer to Active Status" form (Exhibit C); Certificate summarizing the
21 records of the State Bar for Marvin Ray Baxter (Exhibit E); and "Member Demographics" (Exhibit G)
22 were drafted and or compiled by the State Bar, which is a public corporation within the judicial branch
23 of government, serving as an arm of the California Supreme Court. California Attorney General
24 Indexed Letters (Exhibit D) are drafted by the California Attorney General's office. Courts may
25 judicially notice statutory law and official acts of the state's executive and judicial departments under
26 Evidence Code section 452(c) and (h). (*See, e.g., Sierra Club v. California Coastal Com.* (2005)
27 35 Cal.4th 839, 853-854, fn. 9 [taking judicial notice of Attorney General opinion letter]; *Pearson v.*
28 *State Social Welfare Bd.* (1960) 54 Cal.2d 184, 210 [taking judicial notice of state agency records];

1 *In re Sodersten* (2007) __ Cal.App.4th __ 2007 WL 102869 at *2, fn. 1 [taking judicial notice of
2 California State Bar records posted on its official website]; *In re White* (2004) 121 Cal.App.4th 1453,
3 1469, fn. 14 [taking judicial notice of California State Bar records posted on its official website]; *see*
4 *also Kaufman & Broad Communities Inc. v. Performance Plastering Inc.* (2005) 133 Cal.App.4th 26,
5 31 [listing the “Statement of the Vote” as one of the documents properly subject to judicial notice].)

6 The Charter of the City of Oakland (Exhibit F) is a legislative enactment promulgated
7 by the City of Oakland. It is subject to judicial notice pursuant to Evidence Code section 452(b) which
8 makes the legislative enactments of public entities in the United States subject to judicial notice. (*See,*
9 *e.g., Unfair Fire Tax Com. v. City of Oakland* (2006) 136 Cal.App.4th 1424, 1430 & fn. 1 [taking
10 judicial notice of provisions of the Charter of the City of Oakland].)

11 Each of these documents is relevant to the Court’s inquiry. The Statements of the Vote
12 (Exhibits A and H) demonstrate that voters cast 1.5 million more votes for Jerry Brown than any other
13 candidate for Attorney General, and selected Jerry Brown over his primary challenger by nearly a two-
14 to-one margin in the elections plaintiffs would overturn. The Member Status Definitions (Exhibit B)
15 illustrate the material differences that plaintiffs ignore between voluntary inactive status and
16 suspension or involuntary inactive status, while the “Request to Transfer to Active Status” form
17 (Exhibit C) illustrates the slight difference in requirements for voluntary inactive and active status.
18 California Attorney General Indexed Letter, Number IL 73-41, (Exhibit D) establishes that the
19 longstanding interpretation of the “admitted to practice” language in the judicial context supports
20 defendant’s interpretation of section 12503. The State Bar Certificate for Justice Baxter (Exhibit E)
21 demonstrates that plaintiffs’ interpretation of eligibility standards has not been applied in other
22 contexts. Article III, section 503 of the Charter of the City of Oakland (Exhibit F) provides the rule
23 that precluded Attorney General Brown from practicing law while he served as Oakland’s Mayor.
24 Finally, the “Member Demographics” of the State Bar (Exhibit G) document the large number of other
25 candidates excluded from eligibility for office under plaintiffs’ interpretation of section 12503.

1 Based on the above authorities, Defendant respectfully requests that the Court take
2 judicial notice of Exhibits A through H of this Request.

3 Dated: January 29, 2007

Respectfully submitted,

4 Robin B. Johansen
5 Thomas A. Willis
6 Margaret R. Prinzing
7 REMCHO, JOHANSEN & PURCELL, LLP

8 By: 
9 Robin B. Johansen

10 Attorneys for Defendant
11 EDMUND GERALD "JERRY" BROWN JR.

12 (00031241-3)

1 provided by the City of Oakland at its website at <http://www.oaklandnet.com/cityhall.html#documents>.

2 8. Attached as Exhibit G is a true and correct copy of an excerpt from the
3 California State Bar "Member Demographics" posted by the State Bar on its website. I downloaded
4 this page on January 18, 2007 from the website of the State Bar of California at <http://members.calbar.ca.gov/search/demographics.aspx>. According to the website, the information in Exhibit H was current
5 as of the morning of January 18, 2007.
6

7 9. Attached as Exhibit H is a true and correct copy of excerpts of the *Statement of*
8 *the Vote, 2006 Primary Election, June 6, 2006*, setting forth the certified vote totals for various offices
9 including Attorney General from the 2006 Primary Election. It was certified by Bruce McPherson,
10 Secretary of State (2006) on July 15, 2006. I downloaded these pages on January 25, 2007 from the
11 website of the California Secretary of State at [http://www.ss.ca.gov/elections/sov/2006_primary/](http://www.ss.ca.gov/elections/sov/2006_primary/contents.htm)
12 [contents.htm](http://www.ss.ca.gov/elections/sov/2006_primary/contents.htm).

13 I declare under penalty of perjury that the foregoing is true and correct, that I have
14 personal firsthand knowledge of the matters asserted herein, and that if called to testify I could and
15 would competently testify to the truth of those matters. Executed this 29th day of January, 2007, at
16 San Leandro, California.

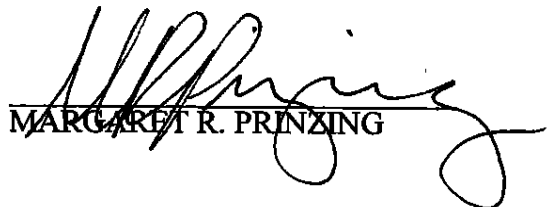
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EXHIBIT A

Statement of Vote

2006 General Election

November 7, 2006

These files are available for download in the Adobe PDF file format. To read these Adobe PDF files you must use the Adobe Acrobat Reader 4.0, available as a [free download from the Adobe Web site](#).

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- [Governor, by County PDF | Excel](#)

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- **Secretary of State, by County [PDF](#) | [Excel](#)**
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- **Statewide Ballot Measures [PDF](#) | [Excel](#)**
 - Proposition Numbers 1A-1C**
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 - Proposition Numbers 84-87**
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CERTIFICATE OF THE SECRETARY OF STATE

I, BRUCE MCPHERSON, Secretary of State of the State of California, hereby certify:

THAT the following is a full, true, and correct statement of the result of the official canvass of the returns of the November 7, 2006 General Election.

IN WITNESS WHEREOF, I
hereunto set my hand and
affix the Great Seal of
California, at Sacramento,
this 16th day of December, 2006.



BRUCE MCPHERSON
Secretary of State

PREFACE

This Statement of Vote is prepared and issued pursuant to Elections Code section §15501. It contains the county-by-county totals of votes cast for the offices of:

Governor
Lieutenant Governor
Secretary of State
Controller
Treasurer
Attorney General
Insurance Commissioner
Member, State Board of Equalization (4 districts)
United States Senator
United States Representative (53 districts)
Member of the State Senate (the 20 even-numbered districts)
Member of the State Assembly (80 districts)
Statewide Ballot Measures (13)

Its companion document, the Supplement to the Statement of Vote, will contain the vote totals for Governor, United States Senator and the Statewide Ballot Measures reported by county and detailed by political subdivisions within each county (supervisorial, congressional, legislative and Board of Equalization districts, cities and unincorporated areas).

Questions concerning these certified election results should be referred to:

Office of the Secretary of State
Elections Division
1500 11th St., Fifth Floor
Sacramento, CA 95814-5701
TELEPHONE (916) 657-2166
FAX (916) 653-3214
EMAIL elections@ss.ca.gov



BRUCE MCPHERSON
Secretary of State

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VOTE SUMMARIES

Official Declaration of the Results of the General Election Held on Tuesday, November 7, 2006, throughout the State of California on Statewide Ballot Measures Submitted to a Vote of Electors

The following proposed laws were approved by voters:

<u>Statewide Ballot Measure Number</u>	<u>Ballot Title</u>
1A	Transportation Funding Protection. Legislative Constitutional Amendment.
1B	Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006.
1C	Housing and Emergency Shelter Trust Fund Act of 2006.
1D	Kindergarten-University Public Education Facilities Bond Act of 2006.
1E	Disaster Preparedness and Flood Prevention Bond Act of 2006.
83	Sex Offenders. Sexually Violent Predators. Punishment, Residence Restrictions and Monitoring. Initiative Statute.
84	Water Quality, Safety and Supply. Flood Control. Natural Resource Protection. Park Improvements. Bonds. Initiative Statute.

The following proposed laws were defeated by voters:

<u>Statewide Ballot Measure Number</u>	<u>Ballot Title</u>
85	Waiting Period and Parental Notification Before Termination of Minor's Pregnancy. Initiative Constitutional Amendment.
86	Tax on Cigarettes. Initiative Constitutional Amendment and Statute.
87	Alternative Energy. Research, Production, Incentives. Tax on California Oil Producers. Initiative Constitutional Amendment and Statute.
88	Education Funding. Real Property Parcel Tax. Initiative Constitutional Amendment and Statute.
89	Political Campaigns. Public Financing. Campaign Corporate Tax Increase. Contribution and Expenditure Limits. Initiative Statute.
90	Government Acquisition, Regulation of Private Property. Initiative Constitutional Amendment.

**Votes For and Against November 7, 2006
Statewide Ballot Measures**

Statewide Ballot Measure Number	For		Against	
	Votes	Percent	Votes	Percent
1A	6,400,587	77.0	1,916,925	23.0
1B	5,112,142	61.4	3,218,657	38.6
1C	4,814,850	57.8	3,521,055	42.2
1D	4,754,868	56.9	3,602,055	43.1
1E	5,305,852	64.2	2,962,546	35.8
83	5,926,800	70.5	2,483,597	29.5
84	4,431,945	53.8	3,807,005	46.2
85	3,868,714	45.8	4,576,128	54.2
86	4,136,358	48.3	4,425,689	51.7
87	3,861,217	45.4	4,635,265	54.6
88	1,947,312	23.3	6,396,956	76.7
89	2,124,728	25.7	6,132,618	74.3
90	3,932,043	47.6	4,324,722	52.4

Effective Date of Statewide Ballot Measures

"An initiative...approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise... If provisions of two or more measures approved at the same election conflict, those [provisions] of the measure receiving the highest affirmative vote shall prevail."

See Cal. Const., Art. II, Sec. 10.

"A proposed [legislative] amendment or revision shall be submitted to the electors and if approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise. If a provision of two or more measures approved at the same election conflict, those [provisions] of the measure receiving the highest affirmative vote shall prevail."

See Cal. Const., Art. XVIII, Sec. 4.

Bond Proposals submitted to the electors by the Legislature also become effective the day following approval by a majority of votes thereon.

See Cal. Const., Art. XVI, Sec. 1.

STATEMENT OF VOTE - Summary Pages

Constitutional Offices

Governor	Votes	Percent	Insurance Commissioner	Votes	Percent
Phil Angelides, DEM	3,376,732	39.0%	Cruz M. Bustamante, DEM	3,204,536	38.5%
Arnold Schwarzenegger, REP	4,850,157	55.9%	Steve Poizner, REP	4,229,986	50.9%
Edward C. Noonan, AI	61,901	0.7%	Jay Earl Burden, AI	127,267	1.5%
Peter Miguel Camejo, GRN	205,995	2.3%	Larry Cafiero, GRN	270,218	3.2%
Art Olivier, LIB	114,329	1.3%	Dale F. Ogden, LIB	305,772	3.7%
Janice Jordan, PF	69,934	0.8%	Tom Condit, PF	187,818	2.2%
Donald "Dr. Don" Etkes, IND (W/I)	43	0%			
Vibert Greene, IND (W/I)	18	0%			
James Harris, IND (W/I)	46	0%	BOE - Member District 1	Votes	Percent
Robert C. Newman, II, REP (W/I)	219	0%	Betty T. Yee, DEM	1,508,130	65.0%
Elisha Shapiro, IND (W/I)	36	0%	David J. Neighbors, REP	677,942	29.2%
Dealphria Christina Tarver, IND	6	0%	Kennita Watson, LIB	68,405	2.9%
			David Campbell, PF	67,697	2.9%
Lieutenant Governor	Votes	Percent	BOE - Member District 2	Votes	Percent
John Garamendi, DEM	4,189,584	49.2%	Tim Raboy, DEM	783,829	37.9%
Tom McClintock, REP	3,845,858	45.1%	Bill Leonard, REP	1,155,308	55.8%
Jim King, AI	68,446	0.8%	Willard Del Michlin, LIB	57,823	2.7%
Donna J. Warren, GRN	239,107	2.8%	Richard R. Perry, PF	75,419	3.6%
Lynnette Shaw, LIB	142,851	1.6%			
Stewart A. Alexander, PF	43,319	0.5%	BOE - Member District 3	Votes	Percent
			Mary Christian-Helsing, DEM	774,499	38.5%
Secretary of State	Votes	Percent	Michelle Steel, REP	1,147,514	57.0%
Debra Bowen, DEM	4,032,553	48.1%	Mary Lou Finley, PF	91,467	4.5%
Bruce McPherson, REP	3,772,951	45.0%			
Glenn McMillon, Jr., AI	135,824	1.6%	BOE - Member District 4	Votes	Percent
Forrest Hill, GRN	181,369	2.2%	Judy Chu, DEM	1,035,391	65.4%
Gail K. Lightfoot, LIB	171,393	2.1%	Glen Forsch, REP	433,353	27.4%
Margie Akin, PF	91,483	1.0%	Monica W. Kadera, LIB	73,078	4.6%
			Cindy Varela Henderson, PF	42,027	2.6%
Controller	Votes	Percent	US Senate	Votes	Percent
John Chiang, DEM	4,232,313	50.7%	Dianne Feinstein, DEM	5,076,289	59.5%
Tony Strickland, REP	3,360,611	40.2%	Richard "Dick" Mountjoy, REP	2,990,822	35.1%
Warren Mark Campbell, AI	106,761	1.2%	Don J. Grundmann, AI	75,350	0.8%
Laura Wells, GRN	260,047	3.2%	Todd Chretien, GRN	147,074	1.8%
Donna Telto, LIB	188,934	2.2%	Michael S. Metti, LIB	133,851	1.5%
Elizabeth Cervantes Barron, PF	212,383	2.5%	Marsha Feinland, PF	117,764	1.3%
			Jeffrey Mackler, IND (W/I)	108	0.0%
Treasurer	Votes	Percent	Kent P. Mesplay, GRN (W/I)	160	0.0%
Bill Lockyer, DEM	4,523,854	54.4%	Lea Sherman, IND (W/I)	47	0.0%
Claude Parrish, REP	3,095,615	37.3%	Connor Vlakandic, IND (W/I)	11	0.0%
E. Justin Noonan, AI	93,281	1.1%			
Mehul M. Thakker, GRN	201,670	2.4%			
Marian Smithson, LIB	334,056	4.0%			
Gerald Sanders, PF	71,726	0.8%			
Attorney General	Votes	Percent			
Jerry Brown, DEM	4,756,184	56.3%			
Chuck Poochigian, REP	3,220,429	38.2%			
Michael S. Wyman, GRN	195,130	2.3%			
Kenneth A. Welssman, LIB	177,469	2.1%			
Jack Harrison, PF	100,797	1.1%			

EXHIBIT B

Member Status Definitions

Status	Definition
Active	Only active members may practice law in California.
Inactive	Inactive members have chosen this status voluntarily and may transfer to active at any time upon request.
Not Eligible to Practice Law	Those listed as not eligible may not practice law in California. There are several reasons that may result in this status, including suspension, involuntary transfer to inactive status and failure to pay mandatory State Bar fees.
Disbarred	Those listed as disbarred are prohibited from practicing law in California by order of the California Supreme Court.
Resigned	Those listed as resigned may not practice law in California. Their resignation has been accepted by the California Supreme Court and may be entirely voluntary or may have been submitted with disciplinary charges pending.
RIHC	Those listed as Registered In-House Counsel (RIHC) are out-of-state attorneys. They have complied with regulations permitting them to practice in California on a limited basis.
RLSA	Those listed as Registered Legal Services Attorneys (RLSA) are out-of-state attorneys. They have complied with regulations permitting them to practice in California on a limited basis.

EXHIBIT C



THE STATE BAR OF CALIFORNIA
Member Services Center
 180 Howard Street · San Francisco, CA 94105-1639
 (888) 800-3400 · memrec@calbar.ca.gov

Request to Transfer to Active Status

1) MEMBER INFORMATION _____

NOTE: Only INACTIVE members may transfer to ACTIVE status

Member Name: _____ Member Number: _____

Enclosed is my check, payable to the State Bar of California, for ACTIVE Membership fees. (Contact the Member Services Center at 1-888-800-3400 for fee information.)

Amount Enclosed \$ _____

I hereby request that I be enrolled as an ACTIVE member of the State Bar of California in accordance with Rule 2.31, Division 3, Title Two of the Rules of the State Bar of California

Signature:

Effective Date

--	--	--	--	--	--

(M M D D Y Y)

Status change will be effective upon receipt of this form and payment in full.

5) SUBMISSION INFORMATION _____

MAIL FORM TO: The State Bar of California
 Member Records
 180 Howard Street
 San Francisco, CA 94105-1639

6) NOTES _____

The Application must include the signature of the member and the appropriate fee. (Call the Member Services Center, 1-888-800-3400, for fee information.)

If your address of record is also changing, please complete an Address Change Form and include it with your Transfer to Active Status Application. *(Please note that regardless of your member status, your address of record is considered part of your public record and will be disclosed upon request and is also available on the State Bar's Web site.)*

A bar card indicating your new status will be sent to you at your address of record.

EXHIBIT D



OFFICE OF THE ATTORNEY GENERAL

Department of Justice

STATE BUILDING, SAN FRANCISCO 94102

FEB 27 1973

IL	73	-	41
LB	383	p	39
Formerly Op.			CV 72/42 IL

Dear

You have requested an opinion on the following question:

Does inactive membership in the State Bar of California, while serving as Traffic Referee, qualify toward the five year eligibility requirement for appointment to the Municipal Court?

Our conclusion is:

For purposes of the revised provision of the California Constitution, article VI section 15, an inactive member of the State Bar is considered a member of the State Bar. Hence, inactive membership may be included in computing the requisite time qualifications for judicial office.

Article VI section 15 of the California Constitution as revised and approved by the electorate in 1966, provides as follows:

"A person is ineligible to be a judge of a court of record unless for 5 years immediately preceding selection to a municipal court or 10 years immediately preceding selection to other courts, he has been a member of the State Bar or served as a judge of a court of record in this State. . . ."

Prior to the 1966 Constitutional revision, the pertinent provision with respect to the eligibility for judicial office was article VI section 23 of the California Constitution, which in part read as follows:

"No person shall be eligible to the office of a Justice of the Supreme Court, or of a district court of appeal, or of a judge of a superior court, or of a municipal court, unless he shall have been admitted to practice before the Supreme Court of the State for a period of at least five years immediately preceding his election or appointment to such office. . . ."

In 52 Ops. Cal. Atty. Gen. 101, 102 (1969) we stated:

"While the phraseology in Article VI, Section 15 varies somewhat from the language contained in former Article VI, Section 23 in that the phrase '. . . he has been a member of the State Bar . . . ' has been substituted for the phrase '. . . unless he shall have been admitted to practice before the Supreme Court of the State . . . , ' and the word 'selection' has been substituted for the phrase 'election or appointment,' no change was intended or accomplished by the 1966 revision of the Constitution."

For the conclusion that no change was intended or accomplished, we relied, *inter alia*, upon an analysis of this change by the Judicial Council. *Id.* at 102, n.1. In its 1967 Annual Report to the Governor and the Legislature, at page 79, the Judicial Council indicated that this language change was only made to conform to other provisions in article VI of the California Constitution. See, e.g., Cal. Const., art. VI, §§ 8 and 21. It thus stated:

"One minor language change was made by the Legislature in its consideration of this section. The requirement for admission to practice law was rephrased in terms of membership in the State Bar, thus making this provision consistent with other provisions in Article VI relating to the same general subject matter. No change in meaning was made by this change in terminology, however, since every person admitted and licensed to practice law in this state is a member of the State Bar by reason of Section 9 of Article VI." (Emphasis added.)

Accepting this premise that no change was intended, the determinative issue herein is whether under prior article

VI section 23, the five year requirement meant five years active membership in the bar, or whether inactive membership was sufficient.

We have exhaustively researched this issue and have found no cases which we believe to be completely determinative. For example, in Johnson v. State Bar, 10 Cal.2d 212 (1937), an attorney under suspension, who had still been practicing in the federal courts, was held to have been ineligible to file as a candidate for the superior court. The court considered his declaration of candidacy averring that he had been a "lawyer, practicing, and admitted to practice since 1927 in California" as "deceptive, dishonest and untruthful," holding:

"It is self-evident, we think, that said provision [of art. VI, § 23] requires as a fundamental qualification for the office of superior judge, that the candidate for such position be qualified as an attorney actually entitled to practice in the state courts" (Emphasis added.) Id. at 216.

Such might indicate active membership was, and hence still is a prerequisite for judicial appointment vis-a-vis inactive membership. See discussion re State Bar Act, infra.

See also, for example, Helwig v. Payne, 197 Cal.524, 527 (1925) wherein a police court judge, who had been admitted to practice in Michigan for many years, but in California for only three years, was held ineligible for the municipal court on the basis that article VI section 23 required that ". . . the judges and justices referred to in said section shall have been practitioners before the supreme court prior to their election or appointment. . . ." (emphasis added) for the requisite period of time. In this context, the term "practitioner" has a somewhat neutral context as between active and inactive membership.

However, in Chambers v. Terry, 40 Cal.App.2d 153 (1940), the issue was whether in San Diego the qualification for municipal judgeship was controlled by the Municipal Court Act relating to San Diego or by article VI section 23. The former required that a judge must have had five years of active practice immediately preceding his election or appointment. In an election contest, article VI section 23 was held to be controlling. However, for the immediately preceding five years the contestee had held various judicial

posts. For the immediately two preceding years he had been a municipal court judge. Thus, he had not been an active member of the bar for the five years immediately preceding his election. His eligibility for office was, however, upheld.

Such holding highlights another point. Judges may not practice law while holding office. Cal. Const., art. VI, § 17; previously art. VI, § 18. Their entitlement to practice as an attorney is suspended during their incumbency. See State Bar of California v. Superior Court, 207 Cal. 323, 336 (1929). Yet, despite that literal wording of old article VI section 23 that a person shall have been admitted to practice for "at least five years immediately preceding his election or appointment to such office. . . ." (Supreme Court, District Court of Appeal, superior court or municipal court), it is common knowledge that judges have gone up the judicial ladder while their status as attorneys was "suspended." Cf. Edier v. Holloper, 214 Cal. 427 (1931).

Thus, without belaboring the point with further case law discussion, a suspended attorney was not eligible for a judicial post under article VI section 23, whereas a lower court judge, whose status as an attorney was suspended, was still eligible for a higher judicial post.

In short, the case law is of little help in definitively determining whether article VI section 23 required active membership in the bar for judicial appointment. If anything, it would appear to indicate that active membership per se was not a prerequisite. Admission to the bar, and the ability to actively practice, at the option of the admittee, appears to have been the criteria. 1/

1. But see Annual Report to the Governor and the Legislature, Judicial Council of California, 1967, page 78:

"Comment. Section 15 deals with the qualifications for office of judges of courts of record and it effects one substantive change in the preexisting law. Whereas the former constitutional provision required only five years' admission to practice to be eligible for any judicial office, Section 15 increases this requirement to 10 years in order to serve as a judge of a superior court, court of appeal, or the Supreme Court. The eligibility requirement for municipal court service remains at five years. Because of this increase, Section 15

Since the law prior to the 1966 revision of article VI is uncertain, we believe that we may construe article VI section 15 in accordance with its plain wording. For a municipal court judgeship five years as "a member of the State Bar" determines eligibility. To determine who are members of the State Bar, the State Bar Act must be examined. Bus. & Prof. Code, § 6000 et seq.

Section 6002 of the Business and Professions Code generally provides that ". . . members of the State Bar are all persons admitted and licensed to practice law in this State. . . ." See also Cal. Const., art. VI, § 9. However, section 6003 states that "Members of the State Bar are divided into two classes: (a) Active members [and] (b) Inactive members." Section 6005 defines inactive membership in the State Bar. Section 6006 provides that "Inactive members are not entitled to hold office or vote or practice law. . . ." Consequently, "No person shall practice law in this state unless he is an active member of the State Bar." § 6125. See also article I section 2, Rules and Regulations of the State Bar of California, (1969). "Enrollment as an Inactive Member."

This last cited rule of the State Bar is significant to our inquiry herein. On March 20, 1968, it was amended to add the following sentence:

states the eligibility requirement with the alternatives of membership in the State Bar or service as a judge of a court of record. This is required since a judge of a court of record is not permitted to practice law while serving as a judge and, therefore, cannot be 'a member of the State Bar' while serving as a judge. The qualifications of justice court judges are prescribed by statute under the provisions of Section 5 of Article VI."

Such comment implicitly recognizes the problem posed by the wording of prior article VI section 23, but fails to answer the question as to how judicial service previously qualified an appointee for a higher judicial post under prior article VI section 23.

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"Nothing in this Section shall prohibit the enrollment as an inactive member of a member employed in a quasi-judicial capacity by any governmental agency if he does not otherwise engage in the practice of law or hold himself out as being entitled to practice law."

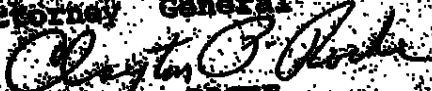
Thus members of the bar include inactive members. Inactive members also include quasi-judicial officers.

Construing article VI section 15 according to its plain meaning, we conclude that inactive membership in the State Bar may be included in computing the requisite time for judicial office. This conclusion also appears to be a salutary result.

Requiring that persons only be members of the State Bar, and not actual practitioners of the law, insures eligibility to judicial office for that vast reservoir of potential judicial talent who otherwise would be ineligible under a stricter interpretation of the California Constitution. This category could include law professors as well as individuals serving in quasi-judicial capacities, who, because of the inherent nature of their functions or personal preferences, may become inactive members of the State Bar.

Very truly yours,

EVELLE J. YOUNGER
Attorney General


CLAYTON F. ROCHE
Deputy Attorney General

CPR:OW

EXHIBIT E



**THE
STATE BAR
OF CALIFORNIA**

180 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105-1639
TELEPHONE (415) 538-2000

January 19, 2007

Kari Krogseng
Remcho et al
201 Dolores Ave
San Leandro CA 94577

TO WHOM IT MAY CONCERN:

In accordance with your request, please find enclosed the form of certificate you require.

If this certificate includes disciplinary matters, and if you want additional information concerning that discipline, you may request copies of those records from the State Bar Court in our Los Angeles office. Call 213-765-1418 for further information.

Please note that effective immediately, for a fee of \$25, you may request a maximum of three (3) certificates per member.

MEMBERSHIP RECORDS DEPARTMENT

WNS:ms
Enclosure



THE
STATE BAR
OF CALIFORNIA

180 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105-1639
TELEPHONE (415) 538-2000

January 19, 2007

TO WHOM IT MAY CONCERN:

This is to certify that according to the records of the State Bar, MARVIN RAY BAXTER, #038953 was admitted to the practice of law in this state by the Supreme Court of California on December 23, 1966; that from the date of admission to January 1, 1984, he was an ACTIVE member of the State Bar of California; that on January 1, 1984, he transferred at his request to the INACTIVE status; that from that date to December 3, 1986, he was an INACTIVE member of the State Bar of California; that on December 3, 1986, he transferred at his request to the ACTIVE status; that from that date to December 2, 1988, he was an ACTIVE member of the State Bar of California; that on December 2, 1988, he became a judge of a court of record; that from that date to date hereof, he is a judge of a court of record, and that during incumbency as such judge is not a member of the State Bar pursuant to the provisions of Section 6002, State Bar Act; and that no recommendation for discipline for professional or other misconduct has ever been made by the Board of Governors or a Disciplinary Board to the Supreme Court of the State of California.

THE STATE BAR OF CALIFORNIA

J. Robert McPhail
Custodian of Membership Records

EXHIBIT F

THE CHARTER OF THE CITY OF OAKLANDTHE CHARTER OF THE CITY OF OAKLAND -- In Effect January 28, 1969**ARTICLE III THE MAYOR**

Section 300. The Mayor. The Mayor shall be nominated and elected from the City at large and shall receive an annual salary payable in equal monthly installments, and without any additional compensation or fees provided for in Section 202 of this Charter. The salary shall be set by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Managers'/Chief Executive Officers of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, The Mayor's salary shall be reviewed by the City Council in odd-numbered years and may be adjusted by the Council as provided for herein. (Amended by: Stats. November 1988 and March 2004.)

Section 301. Qualifications. No person shall be eligible for or continue to hold the Office of Mayor, either by election or appointment, unless he is a citizen of the United States, a qualified elector and resident for at least thirty days of the City or a territory lawfully annexed or consolidated. (Amended by: Stats. November 1988.)

Section 302. Term of Office, the Mayor. The Mayor shall be elected to a term of four years beginning at 11:00 a.m. on the first Monday of January following his election. The Mayor elected to Office to serve a term beginning in 1985 shall serve in Office until 11:00 a.m. on the Monday following January 1 in 1991. In 1990 municipal elections will be held to select City Officers for four year terms, including the Office of Mayor. No person shall be elected to the office of Mayor for more than two consecutive terms, and no person who has held the office of Mayor, or acted as Mayor, for more than two years of a term for which some other person was elected Mayor may be elected to more than one more consecutive term as Mayor. (Amended by: Stats. November 1988, November 1998 and March 2004.)

Section 303. Vacancy, Filling of. Upon the declaration of vacancy in the office of the Mayor, the office of the Mayor shall be filled by the Vice-Mayor of the Council. Except as otherwise provided in this Section, when the Vice-Mayor of the Council assumes the office of Mayor upon declaration of a vacancy, she/he shall serve for the unexpired term if such term is less than one year; otherwise she/he shall serve until the vacancy is filled as provided herein. Whenever the period of vacancy in a Mayor's term of office is less than one year and the Vice Mayor notifies the Council in writing that she/he does not wish to serve as Mayor for the unexpired term, the vacancy shall be filled by appointment through a majority vote of the remaining Councilmembers; provided the appointee shall be ineligible to be a candidate for the next full term of the Office of Mayor. If at the time of a vacancy declaration the unexpired term is one year or more, the vacancy occurring in the office of Mayor shall be filled by special election within 120 days of such vacancy. An extension of up to 60 days may be allowed for the express purpose of consolidating the special election with the next Municipal Election. If no candidate receives the majority of the votes cast in the special election, then a run-off election shall be held for the two candidates who received the highest number of votes no later than 60 days after the date of the special election; provided that all persons receiving a number of votes equal to the highest number of votes received by any candidate shall also be candidates at such run-off election. The candidate receiving the highest number of votes cast for all candidates for the office at the run-off election shall be declared elected. The candidate elected to fill the vacancy shall hold office for the balance of the unexpired term. Notwithstanding any other provision of this section or the Charter, the Council shall have the authority to provide by ordinance for preferential voting procedures as an alternative to a run-off election. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, electronic voting, and extended voting period. (Amended by: Stats. November 1988 and March 2002.)

Section 304. Vacancy: What Constitutes. The office of Mayor shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after his term is to begin,

dies, resigns, ceases to be a resident of the City or absents himself/herself continuously from the City for a period of more than thirty days without permission from the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of his office, forfeits his office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the Mayor. (Amended by: Stats. November 1988 and March 2004.)

Section 305. Functions, Powers and Duties. The Mayor shall be the chief elective officer of the City, responsible for providing leadership and taking issues to the people and marshalling public interest in and support for municipal activity. The Mayor shall have the following powers, duties, and responsibilities:

- (a) The Mayor shall be responsible for the submission of an annual budget to the Council which shall be prepared by the City Administrator under the direction of the Mayor and Council. The Mayor shall, at the time of the submission of the budget, submit a general statement of the conditions of the affairs of the City, the goals of the administration, and recommendations of such measures as he may deem expedient and proper to accomplish such goals.
- (b) Recommend to the Council such measures and legislation as he deems necessary and to make such other recommendations to the Council concerning the affairs of the City as he finds desirable.
- (c) Encourage programs for the physical, economic, social and cultural development of the City.
- (d) Actively promote economic development to broaden and strengthen the commercial and employment base of the City.
- (e) Appoint the City Administrator, subject to confirmation by the City Council, remove the City Administrator and give direction to the City Administrator. The Mayor shall advise the Council before removing the City Administrator.
- (f) Serve as ceremonial head of the City.
- (g) Represent the City in inter-governmental relations as directed by the Council.
- (h) Provide community leadership.

The Mayor shall, at the first meeting of the City Council in October, appear before the Council to deliver a general address on the State of the City, and recommend the adoption of such measures as he/she may deem expedient and proper. The Mayor and such staff as he/she may designate shall also conduct four additional public meetings during the year to solicit and respond to comments, concerns, or questions from the public. These meetings shall be noticed to the public not less than two weeks in advance, and shall be scheduled approximately three months apart.

The Mayor shall devote his full time and attention to the duties of the Office of the Mayor and shall not engage in outside employment while in office. However, nothing shall prevent the Mayor from the receipt of income earned from business(s) or investment(s) in which he is not actively engaged and which are not in conflict with the performance of his duties and responsibilities. (Amended by: Stats. November 1988, November 1998 and March 2004.)

Section 306. Duties of Vice-Mayor. In the absence or temporary disability of the Mayor, the Vice-Mayor shall perform the duties of the office. (Amended by: Stats. November 1988.)

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EXHIBIT G

MEMBER DEMOGRAPHICS

The information on this page only covers attorneys who are active, inactive, not eligible, or are judges.

Information current as of Jan 18 2007 8:09AM

Attorney Membership

Member Status	Population	Average Age	% of Membership
Active	157,186	47	74.74 %
Inactive	43,168	56	20.52 %
Judge	1,914	58	0.91 %
Not Eligible To Practice Law	8,055	55	3.83 %
Total	210,324		

By Age

Hover the mouse over a bar to view the age and population



By District

[View State Bar districts map](#)

District	Population	% of Membership
Outside California	38,460	18.29 %
District 01	3,664	1.74 %
District 02	12,877	6.12 %
District 03	26,875	12.78 %
District 04	20,917	9.95 %
District 05	7,847	3.73 %
District 06	11,368	5.40 %

EXHIBIT H

Statement of Vote

2006 Primary Election

June 6, 2006

These files are available for download in the Adobe PDF file format. To read these Adobe PDF files you must use the Adobe Acrobat Reader 4.0, available as a [free download from the Adobe Web site](#).

[Statement of Vote](#)

[Supplement to the Statement of Vote](#)

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- [Counties by Board of Equalization Districts \(PDF | Excel\)](#)

CERTIFICATE OF THE SECRETARY OF STATE

I, BRUCE MCPHERSON, Secretary of State of the State of California, hereby certify:

THAT the following is a full, true, and correct statement of the result of the official canvass of the returns of the June 6, 2006, Primary Election.

IN WITNESS WHEREOF, I
hereunto set my hand and
affix the Great Seal of
California, at Sacramento,
this 15th day of July, 2006.



A handwritten signature in black ink, appearing to read "Bruce McPherson".

BRUCE MCPHERSON
Secretary of State

PREFACE

This Statement of Vote is prepared and issued pursuant to Elections Code section § 15501. It contains the county-by-county totals of votes cast for the offices of:

Governor
Lieutenant Governor
Secretary of State
Controller
Treasurer
Attorney General
Insurance Commissioner
Member, State Board of Equalization (4 districts)
United States Senator
United States Representative (53 districts)
Member of the State Senate (the 20 even-numbered districts)
Member of the State Assembly (80 districts)
Superintendent of Public Instruction
Statewide Ballot Measures (two)

Its companion document, the Supplement to the Statement of Vote, contains the vote totals for Governor, United States Senator and the Ballot Measures reported by county, and by the political subdivisions within counties; i.e., supervisorial districts, congressional and legislative districts, Board of Equalization districts, cities, and unincorporated areas.

Questions concerning any aspect of the production of these election vote count figures should be referred to:

Office of the Secretary of State
Elections Division
1500 11th St., Fifth Floor
Sacramento, CA 95814-5701
TELEPHONE (916) 657-2166
FAX (916) 653-3214
EMAIL elections@ss.ca.gov



BRUCE MCPHERSON
Secretary of State

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Governor Democratic	Votes	Percent	Secretary of State Republican	Votes	Percent
Barbara Becnel	66,550	2.7%	Bruce McPherson	1,593,007	100.0%
Frank A. Macaluso, Jr.	30,867	1.2%	Secretary of State American Independent	Votes	Percent
Jerald Robert Gerst	21,039	0.8%	Glenn McMillon, Jr.	32,288	100.0%
Joe Brouillette	42,075	1.7%	Secretary of State Green	Votes	Percent
Michael Strimling	35,121	1.4%	Forrest Hill	31,763	100.0%
Phil Angelides	1,202,851	48.0%	Secretary of State Libertarian	Votes	Percent
Steve Westly	1,081,940	43.2%	Gail K. Lightfoot	18,870	100.0%
Vibert Greene	25,745	1.0%	Secretary of State Peace and Freedom	Votes	Percent
Governor Republican	Votes	Percent	Margie Akin	3,929	100.0%
Arnold Schwarzenegger	1,724,281	90.0%	Controller Democratic	Votes	Percent
Bill Chambers	65,487	3.4%	Joe Dunn	1,014,418	48.7%
Jeffrey R. Burns	57,852	3.0%	John Chiang	1,157,724	53.3%
Robert C. Newman II	68,660	3.6%	Controller Republican	Votes	Percent
Governor American Independent	Votes	Percent	Abel Maldonado	628,652	37.0%
Edward C. Noonan	29,094	100.0%	Bret R. Davis	91,758	5.4%
Governor Green	Votes	Percent	David L. Harris	76,310	4.5%
Peter Miguel Camejo	33,545	100.0%	Jim Stieringer	210,691	12.4%
Governor Libertarian	Votes	Percent	Tony Strickland	689,065	40.7%
Art Olivier	16,445	100.0%	Controller American Independent	Votes	Percent
Governor Peace and Freedom	Votes	Percent	Warren Mark Campbell	30,631	100.0%
Janice Jordan	3,849	100.0%	Controller Green	Votes	Percent
Lieutenant Governor Democratic	Votes	Percent	Laura Wells	32,091	100.0%
Jackie Speler	975,530	39.7%	Controller Libertarian	Votes	Percent
John Garamendi	1,045,097	42.6%	Donna Tello	16,700	100.0%
Liz Figueroa	436,849	17.7%	Controller Peace and Freedom	Votes	Percent
Lieutenant Governor Republican	Votes	Percent	Elizabeth Cervantes Barron	4,047	100.0%
Tom McClintock	1,760,853	93.8%	Treasurer Democratic	Votes	Percent
Tony Farmer	117,335	6.2%	Bill Lockyer	2,079,908	100.0%
Lieutenant Governor American Independent	Votes	Percent	Treasurer Republican	Votes	Percent
Jim King	29,012	100.0%	Claude Parrish	912,810	58.3%
Lieutenant Governor Green	Votes	Percent	Keith S. Richman	709,730	43.7%
Donna J. Warren	31,161	100.0%	Treasurer American Independent	Votes	Percent
Lieutenant Governor Libertarian	Votes	Percent	E. Justin Noonan	30,693	100.0%
Lynnette Shaw	16,128	100.0%	Treasurer Green	Votes	Percent
Lieutenant Governor Peace and Freedom	Votes	Percent	Mehul M. Thakker	31,177	100.0%
Stewart A. Alexander	3,549	100.0%	Secretary of State Democratic	Votes	Percent
Secretary of State Democratic	Votes	Percent	Deborah V. Ortiz	847,386	39.1%
Deborah V. Ortiz	847,386	39.1%	Debra Bowen	1,316,507	60.9%
Debra Bowen	1,316,507	60.9%			

STATEMENT OF VOTE, Summary Pages

Treasurer Libertarian	Votes	Percent	Board of Equalization Member District 1 Peace and Freedom	Votes	Percent
Marian Smithson	18,745	100.0%	David Campbell	1,508	100.0%
Treasurer Peace and Freedom	Votes	Percent	Board of Equalization Member District 2 Democratic	Votes	Percent
Gerald Sanders	3,681	100.0%	Tim Raboy	286,188	67.3%
Attorney General Democratic	Votes	Percent	Tom Bright	139,566	32.7%
Jerry Brown	1,552,922	63.3%	Board of Equalization Member District 2 Republican	Votes	Percent
Rocky Delgadillo	903,508	36.7%	Bill Leonard	353,710	67.6%
Attorney General Republican	Votes	Percent	Ed Streichman	170,154	32.4%
Chuck Poochiglan	1,553,590	100.0%	Board of Equalization Member District 2 Libertarian	Votes	Percent
Attorney General Green	Votes	Percent	Willard Del Michlin	3,989	100.0%
Michael S. Wyman	31,017	100.0%	Board of Equalization Member District 2 Peace and Freedom	Votes	Percent
Attorney General Libertarian	Votes	Percent	Richard R. Perry	866	100.0%
Kenneth A. Weissman	16,567	100.0%	Board of Equalization Member District 3 Democratic	Votes	Percent
Attorney General Peace and Freedom	Votes	Percent	Mary Christian-Helsing	368,004	100.0%
Jack Harrison	3,738	100.0%	Board of Equalization Member District 3 Republican	Votes	Percent
Insurance Commissioner Democratic	Votes	Percent	Hal "Jimbo" Styles	38,532	7.0%
Cruz M. Bustamante	1,651,811	70.5%	Lewis A. Da Silva	28,643	5.2%
John Kraft	693,637	29.5%	Michelle Steel	206,546	37.8%
Insurance Commissioner Republican	Votes	Percent	Ray Haynes	184,417	33.7%
Steve Poizner	1,519,040	100.0%	Steve Petruzzo	89,497	16.3%
Insurance Commissioner American Independent	Votes	Percent	Board of Equalization Member District 3 Peace and Freedom	Votes	Percent
Jay Earl Burden	29,278	100.0%	Mary Lou Finley	803	100.0%
Insurance Commissioner Green	Votes	Percent	Board of Equalization Member District 4 Democratic	Votes	Percent
Larry Cafero	30,741	100.0%	Jerome Horton	154,508	31.5%
Insurance Commissioner Libertarian	Votes	Percent	Judy Chu	243,401	49.7%
Dale F. Ogden	16,760	100.0%	Rita Rogers	60,810	12.3%
Insurance Commissioner Peace and Freedom	Votes	Percent	Vonny T. Abbott	32,013	6.5%
Tom Condit	3,850	100.0%	Board of Equalization Member District 4 Republican	Votes	Percent
Board of Equalization Member District 1 Democratic	Votes	Percent	Glen Forsch	80,452	43.3%
Betty T. Yee	728,992	100.0%	John Y. Wong	79,416	42.7%
Board of Equalization Member District 1 Republican	Votes	Percent	Sam Song Yong Park	28,098	14.0%
David J. Neighbors	332,218	100.0%	Board of Equalization Member District 4 Libertarian	Votes	Percent
Board of Equalization Member District 1 Libertarian	Votes	Percent	Monica W. Kadera	2,168	100.0%
Kennita Watson	5,841	100.0%	Board of Equalization Member District 4 Peace and Freedom	Votes	Percent
			Cindy Varela Henderson	740	100.0%

1 **PROOF OF SERVICE**

2 I, the undersigned, declare under penalty of perjury that:

3 I am a citizen of the United States, over the age of 18, and not a party to the within
4 cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

5 On January 29, 2007, I served a true copy of the following document(s):


6 **Request for Judicial Notice; Declaration of Margaret R. Prinzing**

7 on the following party(ies) in said action:

8 Please see attached Service List.

- 9 **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed
10 envelope or package addressed to the person(s) at the address above and
11 depositing the sealed envelope with the United States Postal Service, with
12 the postage fully prepaid.
13 placing the envelope for collection and mailing, following our ordinary
14 business practices. I am readily familiar with the businesses' practice for
15 collecting and processing correspondence for mailing. On the same day
16 that correspondence is placed for collection and mailing, it is deposited in
17 the ordinary course of business with the United States Postal Service,
18 located in San Leandro, California, in a sealed envelope with postage
19 fully prepaid.
- 20 **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope
21 or package provided by an overnight delivery carrier and addressed to the persons
22 at the addresses listed. I placed the envelope or package for collection and
23 overnight delivery at an office or a regularly utilized drop box of the overnight
24 delivery carrier.
- 25 **BY PERSONAL SERVICE:** By giving the document(s) directly to the persons
26 listed above.
- 27 **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons
28 at the fax numbers listed based on an agreement of the parties to accept service by
fax transmission. No error was reported by the fax machine used. A copy of the
fax transmission is maintained in our files.
- BY E-MAIL TRANSMISSION:** By e-mailing the document(s) to the persons at
the e-mail addresses listed based on a court order or an agreement of the parties to
accept service by e-mail. No electronic message or other indication that the
transmission was unsuccessful was received within a reasonable time after the
transmission.

25 I declare, under penalty of perjury, that the foregoing is true and correct. Executed on
26 January 29, 2007, in San Leandro, California.

27 
28 _____
Sabrina Miller

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