

ENVIRONMENTAL
PROTECTION
99 JUN 14 PM 3:51

1 Matthew F. Lintner (No. 150926)
2 SONNENSCHN NATH & ROSENTHAL
3 685 Market Street, 6th Floor
4 San Francisco, California 94105
5 Telephone: (415) 882-5000
6 Facsimile: (415) 543-5472

7
8 Attorneys for Petitioner
9 COIT SERVICES, INC.

10 STATE OF CALIFORNIA
11 STATE WATER RESOURCES CONTROL BOARD

12 In the Matter of the Petition of Coit Services,
13 Inc. for Review of a Determination of Alameda
14 County Health Care Services Agency
15 Regarding the Status of Coit Services, Inc. as a
16 Responsible Party for 1137-1167 65th Street,
17 Oakland, California 94608.

18 File No. _____
19 PETITION TO THE STATE WATER
20 RESOURCES CONTROL BOARD

SONNENSCHN NATH & ROSENTHAL
685 MARKET STREET, 6TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
(415) 882-5000

21 Pursuant to State Water Resources Control Board Resolution 88-23, Coit
22 Services, Inc. ("Coit" or "Petitioner") hereby petitions the State Water Resources Control Board
23 for review of the Alameda County Health Care Services Agency action naming Coit as a
24 Responsible Party in connection with certain underground storage tanks located at 1137-1167
25 65th Street, Oakland, CA 94608.

26 In accordance with Resolution 88-23, Coit offers the following information in
27 support of this petition:

28 **(1) Name and address of the petitioner:**

Coit Services, Inc.
897 Hinckley Road
Burlingame, CA 94010

SONNENSCHN NATH & ROSENTHAL
685 MARKET STREET, 6TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
(415) 882-5000

1 **(2) The specific action or inaction of the local agency which the State Board is**
2 **requested to review:**

3 The naming of Coit as a Responsible Party for the site located at 1137-1167 65th Street,
4 Oakland, CA 94608, pursuant to Sections 25297.1 and 25297.15 of the California Health &
5 Safety Code, in a letter dated May 12, 1999 entitled "Notice of Responsibility" from the
6 Alameda County Health Care Services Agency.

7 A copy of this letter is attached hereto as Exhibit A.

8 **(3) The date on which the local agency acted or refused to act or on which the local**
9 **agency was requested to act:**

10 The Notice of Responsibility letter is dated May 12, 1999. Counsel for Coit has had
11 several conversations with Susan Hugo of the Alameda County Health Care Services Agency
12 since the date of that letter, and has requested that Responsible Party status be withdrawn, by
13 letter dated June 3, 1999. See Exhibit B, attached. To date, Alameda County has not withdrawn
14 the Notice of Responsibility.

15 **(4) A full and complete statement of the reasons the action or failure to act was**
16 **inappropriate:**

17 Coit is not an appropriate Responsible Party for any contamination which may
18 have been released from certain underground tanks which are now or ever have been located at
19 the 65th Street site. Coit is not a current owner or operator of the 65th Street site. Coit was at no
20 time an operator of the tanks. Coit did own the site for a period of months in 1978 and 1979.
21 However, Coit did not own the site prior to the time operations of the tanks ceased. Finally,
22 there is no evidence of a release during Coit's ownership of the site.

23 **(5) The manner in which the petitioner is aggrieved:**

24 Being identified as a Responsible Party entails duties and obligations for which
25 Coit is not responsible.

26 **(6) The specific action by the State Board or the local agency which the petitioner**
27 **requests:**

28 Petitioner requests that the State Board direct the Alameda County Health Care

1 Services Agency to withdraw Coit from the list of Responsible Parties for the 65th Street site.

2 (7) **A statement of points and authorities in support of legal issues raised in the**
3 **petition:**

4 First, Petitioner will provide a brief summary of the facts in this case. A California
5 corporation named Trans-Western Service Industries, Inc. (herein referred to as "Trans-
6 Western") conducted dry-cleaning operations at the 65th Street site for many years. To Coit's
7 understanding, the site served as a processing center for dry-cleaning storefront operations in the
8 area. Trans-Western ceased dry-cleaning operations at the site, and shortly thereafter, in 1978,
9 Coit acquired the stock of Trans-Western. Trans-Western operated a second central processing
10 facility at another location, which continued to operate during the time Coit owned the stock of
11 the entity. Coit acquired an ownership interest in the 65th Street parcel at the time it acquired an
12 ownership interest in the stock of Trans-Western, but the tanks were no longer in use at the time
13 of Coit's ownership of the parcel. In 1979, Coit sold the parcel to Alan Wofsy, a real estate
14 developer. To Coit's understanding, Mr. Wofsy sold the parcel at some point thereafter to Mr.
15 John Nady, the person initially identified by the Alameda County Health Care Services Agency
16 as a Responsible Party at the site, and the person who continues to own the site. In 1981, Coit
17 sold the stock of Trans-Western. These facts are supported by the Declaration of Louis Kearn,
18 attached hereto as Exhibit C.

19 Given these facts, it does not appear that there is any basis to identify Coit as a
20 Responsible Party. State Water Resources Control Board regulations define "Responsible Party"
21 for purposes of underground storage tank corrective action requirements as one of the following:

- 22 1. Any person who owns or operates an underground
23 storage tank used for the storage of any hazardous
24 substance;
- 25 2. In the case of any underground storage tank no
26 longer in use, any person who owned or operated
27 the underground storage tank immediately before
28 the discontinuation of its use;
3. Any owner of property where an unauthorized
release of a hazardous substance has occurred; and

- 1 4. Any person who had or has control over an
2 underground storage tank at the time of or following
3 an unauthorized release of a hazardous substance.

4 See 23 California Code of Regulations section 2720.

5 Coit does not fall into any of these four categories.

6 With respect to the first category, Coit does not currently own or operate any tanks at the
7 site. See Exhibit C.

8 With respect to the second category, the tanks were taken out of use by Trans-Western
9 prior to Coit's purchase of the stock of Trans-Western, and prior to Coit having any ownership
10 interest in the parcel. See Exhibit C. Accordingly, Coit can in no sense be said to have owned or
11 operated the tanks "immediately before the discontinuation of [their] use." Indeed, Coit never
12 operated the tanks at any time. Trans-Western did operate the tanks, but Coit has subsequently
13 sold the stock of that entity. Further, even if Coit had not sold the stock of this entity, it would
14 not be appropriate to name Coit as a responsible party for the actions of a wholly-owned
15 subsidiary, absent some showing that it would be justified to disregard corporate form. See, e.g.,
16 United States v. Bestfoods, 524 U.S. 51 (1998).

17 With respect to the third category, again, Coit does not currently own the parcel. See
18 Exhibit C. Although Coit did hold an ownership interest in the parcel for several months in 1978
19 and 1979, there is no information of which Coit is aware indicating that there was any release
20 during this period of time. Indeed, based upon information received from Susan Hugo of the
21 Alameda County Health Care Services Agency, it appears that significant amounts of product
22 (presumably stoddard solvent, which was used by Trans-Western) remain in the tanks, a fact
23 which would be inconsistent with a release twenty years ago.

24 With respect to the fourth category, Coit at no time has had "control" over the tanks,
25 because it never operated them. See Exhibit C. Furthermore, during the only period of time that
26 Coit even had any connection to the tanks (the several months when it held an ownership interest
27 in the parcel), there is again no information indicating that there was a release of a hazardous
28 substance during this period of time.

1 In these circumstances, issuing a Notice of Responsibility to Coit is inconsistent with
2 previous State Board precedent. The State Board has determined that a local agency must show
3 substantial evidence in order to support a finding of responsibility for each party named. See In
4 the Matter of the Petition of U.S. Cellulose and Louis J. & Shirley D. Smith, WQ 92-04 (March
5 19, 1992). There is no indication here that the local agency has any evidence, much less any
6 substantial evidence, for a finding of responsibility. In addition, the State Board has found that a
7 local agency must demonstrate with substantial evidence that a release occurred during the
8 ownership of the "Responsible Party." See In the Matter of the Petition of Alvin Bacharach &
9 Barbara Borsuk, WQ 91-07 (June 20, 1991). As discussed above, Coit is unaware of any such
10 evidence.

11 Therefore, based on the above points, Coit requests that the State Board instruct the
12 Alameda County Health Care Services Agency to withdraw the Notice of Responsibility issued
13 to Coit with respect to the 65th Street site.

14 **(8) A list of the persons, if any, other than the petitioner, known by the local agency**
15 **to have an interest in the subject matter of the petition. Such list shall be obtained from the**
16 **agency:**

17 Mr. John Nady
18 Nady Systems Inc.
19 6701 Bay Street
Emeryville, CA 94608

20 Mr. Nady, the current owner of the 65th Street site, has been identified by the
21 Alameda County Health Care Services Agency as Responsible Party Number 1. According to
22 Ms. Hugo of the Alameda County Health Care Services Agency, Coit was identified as a
23 Responsible Party at the site based entirely on information provided by Mr. Nady through his
24 attorney.

25 **(9) A statement that the petition has been sent to the local agency, the appropriate**
26 **Regional Board, and to any other responsible parties other than petitioner known to the**
27 **petitioner or the local agency.**

28 Coit confirms that this Petition has been sent to the parties listed in the Proof of Service

1 accompanying this Petition.

2 (10) A copy of the request to the local agency for preparation of the local agency
3 record.

4 See Exhibit D attached hereto.

5
6 For the reasons set forth in this Petition, including the attachments hereto,
7 Petitioner respectfully requests that the State Water Resources Control Board direct the Alameda
8 County Health Care Services Agency to withdraw Coit from the list of Responsible Parties for
9 the 65th Street site. Coit believes that the evidence presented herein is sufficient to render a
10 decision in the matter. If, however, the Board believes that additional information is required,
11 Coit hereby requests a hearing to present such information.

12
13 Dated: June 11, 1999

SONNENSCHN NATH & ROSENTHAL

14
15
16 By: 

Matthew F. Lintner

17 27011943

SONNENSCHN NATH & ROSENTHAL
685 MARKET STREET, 6TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
(415) 882-5000

ALAMEDA COUNTY
HEALTH CARE SERVICES



AGENCY
DAVID J. KEARS, Agency Director

Certified Mail # P 368 729 464
05/12/99

ENVIRONMENTAL HEALTH SERVICES
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
(510) 337-9335 (FAX)

Notice of Responsibility

StID# 6394
1137-1167 65th St
1137 65th St (-1167)
Oakland, CA 94608

SITE

Date First Reported 03/09/99
Substance: Stoddard Solvent
Source : Federally Funded
MultiRPs?: Yes

Mr. Louis Kearn
Coit Services, Inc.
897 Hinckley Road
Burlingame, Ca 94010

Responsible Party (RP) # 2
(list of all RP's attached)

Pursuant to Sections 25297.1 and 25297.15 of the Health and Safety Code, you are hereby notified that the above site has been placed in the Local Oversight Program and the individual(s) or entity(ies) shown above, or on the attached list, has(have) been identified as the party(ies) responsible for investigation and cleanup of the above site. Section 25297.15 further requires the primary or active Responsible Party to notify all current record owners of fee title before the local agency considers cleanup or site closure proposals or issues a closure letter. For purposes of implementing section 25297.15, this agency has identified ALL RESPONSIBLE PARTIES (see list) as the primary or active Responsible Party. It is the responsibility of the primary or active Responsible Party to submit a letter to this agency within 20 calendar days of receipt of this notice which identifies all current record owners of fee title. It is also the responsibility of the primary or active Responsible Party to certify to the local agency that the required notification have been made at the time a cleanup or site closure proposal is made or before the local agency makes a determination that no further action is required. If property ownership changes in the future, you must notify this local agency within 20 calendar days from when you are informed of the change.

Any action or inaction by this local agency associated with corrective action, including responsible party identification, is subject to petition to the State Water Resources Control Board. Petitions must be filed within 30 days from the date of the action/inaction. To obtain petition procedures, please FAX your request to the State Water at (916) 227-4349 or telephone (916) 227-4408.

Pursuant to section 25299.37(c)(7) of the Health and Safety Code, a responsible party may request the designation of an administering agency when required to conduct corrective action. Please contact Susan Hugo, Hazardous Materials Specialist at this office at (510) 567-6700 for futher information about the site designation process.

Richard A. Pantages
Richard A. Pantages, Chief
Contract Project Director

Date May 11 1999

Please Circle One Add Delete Change

Reason: ADD RP # 2

C: Lori Casias, SWRCB
Susan Hugo, Hazardous Materials Specialist

ALAMEDA COUNTY - DEPARTMENT OF ENVIRONMENTAL HEALTH
HAZARDOUS MATERIALS DIVISION

05/12/99

LIST OF RESPONSIBLE PARTIES FOR

SITE

StID: 6394
1137-1167 65th St
1137 65th St (-1167)
Oakland, CA 94608

Date First Reported 03/09/99
Substance: Stoddard Solvent
Petroleum (X) Yes
Source: F

Mr. John Nady
Nady Systems Inc.
6701 Bay Street
Emeryville, California 94608

Responsible Party #1
Property Owner

Mr. Louis Kearn
Coit Services, Inc.
897 Hinckley Road
Burlingame, Ca 94010

Responsible Party #2
Contact Person
Contact Company

SONNENSCHN NATH & ROSENTHAL

THE MONADNOCK BUILDING
685 MARKET STREET
6TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105

(415) 882-5000
FACSIMILE
(415) 543-5472

Matthew F. Lintner
(415) 882-2429

June 3, 1999

VIA FACSIMILE AND U.S. MAIL

Ms. Susan Hugo
Hazardous Materials Specialist
Alameda County
Health Care Services Agency
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

Re: 1137 – 1167 65th St., Oakland, CA
Notice of Responsibility dated May 12, 1999 to Coit Services, Inc.

Dear Ms. Hugo:

As we discussed yesterday on the telephone, this firm represents Coit Services, Inc. in connection with the Notice of Responsibility sent by the Alameda County Health Care Services Agency to Coit Services dated May 12, 1999.

Based on our conversation, it is my understanding that you have identified Coit Services because you had received information indicating that Coit was an owner and/or operator of certain underground storage tanks at the 65th Street site at the time of their apparent abandonment. As we discussed, this is not the case, and I provide herein some background on the matter which I hope will be of assistance.

A California corporation named Trans-Western Service Industries, Inc. conducted dry-cleaning operations at the site for many years. To Coit's understanding, the site served as a processing center for dry-cleaning storefront operations in the area. Trans-Western ceased dry-cleaning operations at the site, and shortly thereafter, in 1978, Coit Services acquired the stock of Trans-Western. Trans-Western operated a second central processing facility at another location which continued to operate during the time Coit owned the stock of the entity. Coit acquired an

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Ms. Susan Hugo
June 3, 1999
Page 2

ownership interest in the 65th Street parcel at the time it acquired an ownership interest in the stock of Trans-Western, but the tanks were no longer in use at the time of Coit's ownership of the parcel. In 1979, Coit sold the parcel to Alan Wofsy, a real estate developer. To Coit's understanding, Mr. Wofsy sold the parcel at some point thereafter to Mr. John Nady, the person you initially identified as a responsible party at the site, and the person who continues to own the site. In 1981, Coit sold the stock of Trans-Western.

Given these facts, it does not appear that there is any basis to identify Coit as a responsible party. State Water Resources Control Board regulations define "responsible party" for purposes of underground storage tank corrective action requirements as one of the following:

- (1) Any person who owns or operates an underground storage tank used for the storage of any hazardous substance;
- (2) In the case of any underground storage tank no longer in use, any person who owned or operated the underground storage tank immediately before the discontinuation of its use;
- (3) Any owner of property where an unauthorized release of a hazardous substance has occurred; and
- (4) Any person who had or has control over a underground storage tank at the time of or following an unauthorized release of a hazardous substance.

See 23 California Code of Regulations section 2720.

Coit does not fall into any of these four categories.

With respect to the first category, Coit does not currently own or operate any tanks at the site.

With respect to the second category, the tanks were taken out of use by Trans-Western prior to Coit's purchase of the stock of Trans-Western, and prior to Coit having any ownership interest in the parcel. Accordingly, Coit can in no sense be said to have owned or operated the tanks "immediately before the discontinuation of [their] use." Indeed, Coit never operated the tanks at any time. Trans-Western did operate the tanks, but Coit has subsequently sold the stock of that entity. Indeed, even if Coit had not sold the stock of this entity, it would not be appropriate to name Coit as a responsible party for the actions of a wholly-owned subsidiary, absent some showing that it would be justified to disregard corporate form. See, e.g., United States v. Bestfoods, 524 U.S. 51 (1998).

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Ms. Susan Hugo
June 3, 1999
Page 3

With respect to the third category, again, Coit does not currently own the parcel. Although Coit did hold an ownership interest in the parcel for several months in 1978 and 1979, there is no information of which Coit is aware indicating that there was any release during this period of time. Indeed, as you have indicated, there appears to be significant amounts of stoddard solvent remaining in the tanks, a fact which would be inconsistent with a release twenty years ago.

With respect to the fourth category, Coit at no time has had "control" over the tanks, because it never operated them. Furthermore, during the only period of time that Coit even had any connection to the tanks (the several months when it held an ownership interest in the parcel), there is again no information indicating that there was a release of a hazardous substance during this period of time.

I hope that this information will be helpful to you as you evaluate this matter. Based on the above information, Coit requests that you withdraw your letter dated May 12, 1999 which identifies Coit as a responsible party. Coit would greatly appreciate a decision on this matter as soon as practicable. Coit will be obligated to file a petition to the State Water Resources Control Board challenging the improper designation pursuant to Resolution No. 88-23 on or before June 12, 1999, and accordingly, it would be ideal if at all possible to resolve this matter before that time.

Finally, with respect to the citation in your letter to Health & Safety Code section 25297.15, which requires that primary responsible parties identify to your agency all current record owners of fee title, Coit contests that any such requirement is appropriate for Coit, as it is not an appropriate responsible party. Nonetheless, Coit has contacted counsel for Mr. John Nady in this matter, a Mr. Frederic Schrag, and he indicated that his client, Mr. John Nady, is in fact the current holder of fee title to the parcel.

Please give me a call at (415) 882-2429 if there is any further information I can provide as you evaluate this site. Thank you for your consideration of this matter.

Sincerely,



Matthew F. Lintner

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(415) 882-5000

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Matthew F. Lintner (No. 150926)
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Attorneys for Petitioner
COIT SERVICES, INC.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of Coit Services,
Inc. for Review of a Determination of Alameda
County Health Care Services Agency
Regarding the Status of Coit Services, Inc. as a
Responsible Party for 1137-1167 65th Street,
Oakland, California 94608.

File No. _____
DECLARATION OF LOUIS KEARN

I, Louis Kearm, declare:

1. I am the former Chief Executive Officer of Coit Services, Inc. (herein referred to as "Coit"). I make this declaration based on personal knowledge and, if called upon to do so, I could and would testify competently to the facts recited herein.
2. I was the Chief Executive Officer of Coit during the late 1970s and early 1980s.
3. I was involved in the transaction through which Coit purchased the stock of Trans-Western Service Industries, Inc. (herein referred to as "Trans-Western") in 1978.
4. At the time Coit acquired the stock of Trans-Western, Coit also acquired ownership of one of the parcels owned by Trans-Western, at 1137-1167 65th Street, Oakland, California.
5. Coit sold the 65th Street parcel to Alan Wofsy in 1979, who, to the best of my

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685 MARKET STREET, 6TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
(415) 882-5000

1 knowledge, sold the parcel to the current owner.

2 6. Trans-Western was a wholly-owned subsidiary of Coit from 1978 through 1981.
3 However, in 1981 Coit sold all of the stock of Trans-Western. To the best of my knowledge,
4 Trans-Western continued to operate as a California corporation for at least several years
5 thereafter. From 1981 through to the present, Coit has had no remaining ownership interest in
6 Trans-Western's stock.

7 7. During the entire time that Coit owned the 65th Street parcel, no underground
8 storage tanks were in operation, as Trans-Western had ceased dry-cleaning operations at the 65th
9 Street parcel prior to Coit's acquisition of an ownership interest in the parcel.

10 8. During the entire time that Coit owned an interest in the stock of the Trans-
11 Western entity, no underground storage tanks were in operation at the 65th Street parcel, as
12 Trans-Western had ceased dry-cleaning operations at the parcel prior to Coit's acquisition of an
13 ownership interest in Trans-Western's stock.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct. Executed this 10th day of June, 1999 at Burlingame, California.

16
17
18 

19
20 _____
Louis Kern

21 27011941

SONNENSCHN NATH & ROSENTHAL

THE MONADNOCK BUILDING
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(415) 543-5472

Matthew F. Lintner
(415) 882-2429

June 11, 1999

VIA U.S. MAIL

Ms. Susan Hugo
Hazardous Materials Specialist
Alameda County
Health Care Services Agency
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

Re: 1137 - 1167 65th St., Oakland, CA
Notice of Responsibility dated May 12, 1999 to Coit Services, Inc.

Dear Ms. Hugo:

I write to inform you that a petition has been filed with the State Water Resources Control Board, pursuant to Resolution 88-23, requesting review of your Agency's Notice of Responsibility dated May 12, 1999 to Coit Services, Inc. A copy of the petition is enclosed herewith.

I hereby request that you prepare the local agency record in this matter.

Sincerely,



Matthew F. Lintner

27011253v1

1 PROOF OF SERVICE

2 I, Jocasta Wong, hereby declare:

3 I am employed in the City and County of San Francisco, California in the office of a
4 member of the bar of the State of California at whose direction the following service was made. I
5 am over the age of eighteen years and not a party to the within action. My business address is
Sonnenschein Nath & Rosenthal, 685 Market Street, 6th Floor, San Francisco, California 94105.

6 On June 11, 1999, I served:

7 PETITION TO THE STATE WATER RESOURCES CONTROL BOARD

8 on the interested parties in this action by placing a true copy thereof, on the above date, enclosed in a
9 sealed envelope, following the ordinary business practice of Sonnenschein Nath & Rosenthal, as
follows:

10 John Nady
11 Nady Systems Inc.
12 6701 Bay Street
Emeryville, CA 94608

13 Susan Hugo
14 Hazardous Materials Specialist
15 Alameda County
16 Health Care Services Agency
17 Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

18 Regional Water Quality Control Board
19 San Francisco Bay Region
1515 Clay Street
20 Oakland, CA 94612

21 U.S. MAIL: I am personally and readily familiar with the business practice of
22 Sonnenschein Nath & Rosenthal for collection and processing of correspondence for
23 mailing with the United States Postal Service, pursuant to which mail placed for
24 collection at designated stations in the ordinary course of business is deposited the same
day, proper postage prepaid, with the United States Postal Service.

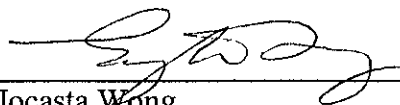
25 FACSIMILE TRANSMISSION: I caused such document to be sent by facsimile
transmission at the above-listed fax number for the party.

26 FEDERAL EXPRESS: I served the within document in a sealed Federal Express
27 envelope with delivery fees provided for and deposited in a facility regularly maintained
28 by Federal Express.

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HAND DELIVERY: I caused such document to be served by hand delivery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 11, 1999, at San Francisco, California.



Jocasta Wong