

## TAXPAYER EXHIBIT

B9

February 24, 2010

Sherry Donnelly

474206

Sherry Donnelly

## Summary of W-2 Earnings

Year	Employer	Gross Wages
1997	Focus Media	66,337
1998	Focus Media	63,052
1999	Focus Media	55,761
2000	Focus Media	111,521
2001	SAG & Misc	27,527
2002	SAG	41,897
2003	SAG	44,791
2004	SAG	42,694
2005	SAG	41,671
2006	SAG	42,348
2007	SAG	43,416

Sherry Donnelly

Analysis of Amending year 2000 vs 2007

<u>Year</u>	<u>Federal</u>	<u>Refund</u> <u>CA</u>
2000	12,009	3788
2007	<u>1,966</u>	<u>884</u>
Difference	# 10,043	# 2,904

I.S. KROOP C.P.A.  
17836 CHATSWORTH STREET  
GRANADA HILLS CA 91344  
818-831-7881

*Tax  
copy*

06-18-2008

SHERRY L. DONNELLY

INSTRUCTIONS FOR FILING 2000 FEDERAL FORM 1040X

- .Your amended return shows a refund of \$12,009.00.
- .You must sign FORM 1040X, page 1.
- .Mail your return to:

INTERNAL REVENUE SERVICE  
FRESNO, CA 93888-0002

INSTRUCTIONS FOR FILING 2000 CALIFORNIA FORM 540X

- .You will receive a refund of \$3,788.00.
- .You must sign your return and attach Federal 1040.
- .Mail your return on or before AUGUST 15 2001 to:

FRANCHISE TAX BOARD  
P.O. BOX 942840  
SACRAMENTO, CA 94240-0000

▶ See separate instructions.

This return is for calendar year ▶ 2000 , or fiscal year ended ▶

P R I N T I N G I N S T R U C T I O N S	Your first name and initial SHERRY L.	Last name DONNELLY	social security no. [REDACTED] 8
	If a joint return, spouse's first name and initial	Last name	Spouse's [REDACTED]
	Home address (no. and street) or P.O. box if mail is not delivered to your home [REDACTED]	Apt. no.	Phone number [REDACTED]

Act Notice, see Inst.

- A** If the name or address shown above is different from that shown on the original return, check here
- B** Has the original return been changed or audited by the IRS or have you been notified that it will be?  Yes  No
- C** Filing status. Be sure to complete this line. **Note.** You cannot change from joint to separate returns after the due date.
- On original return ▶  Single  Married filing joint return  Married filing separate return  Head of household  Qualifying widow(er)
- On this return ▶  Single  Married filing joint return  Married filing separate return  Head of household\*  Qualifying widow(er)
- \* If the qualifying person is a child but not your dependent, see instructions.

Use Part II on Page 2 to Explain Any Changes		A. Original amount or as previously adjusted (see inst.)	B. Net change -- amt. of increase or (decrease) -- explain in Part II	C. Correct amount
<b>Income and Deductions (see instructions)</b>				
1	Adjusted gross income (see instructions) . . . . .	131,778	-40,000	91,778
2	Itemized deductions or standard deduction (see instructions) . . . . .	28,718	85	28,803
3	Subtract line 2 from line 1 . . . . .	103,060	-40,085	62,975
4	Exemptions. If changing, fill in Parts I and II on page 2 . . . . .	2,688	112	2,800
5	Taxable income. Subtract line 4 from line 3 . . . . .	100,372	-40,197	60,175
L I A B I L I T Y	6 Tax (see instructions). Method used in col. C <u>SCH D</u>	24,511	-12,009	12,502
	7 Credits (see instructions) . . . . .			
	8 Subtract line 7 from line 6. Enter the result but not less than zero . . . . .	24,511	-12,009	12,502
	9 Other taxes (see instructions) . . . . .			
10	Total tax. Add lines 8 and 9 . . . . .	24,511	-12,009	12,502
P A Y M E N T S	11 Federal income tax withheld and excess social security and RRTA tax withheld. If changing, see instructions . . . . .	20,653		20,653
	12 Estimated tax payments, including amount applied from prior year's return . . . . .			
	13 Earned income credit (EIC) . . . . .			
	14 Additional child tax credit from Form 8812 . . . . .			
	15 Credits from Form 2439 or Form 4136 . . . . .			
	16 Amount paid with request for extension of time to file (see instructions) . . . . .			
	17 Amount of tax paid with original return plus additional tax paid after it was filed . . . . .			3,858
	18 Total payments. Add lines 11 through 17 in column C . . . . .			24,511

Refund or Amount You Owe		
19	Overpayment, if any, as shown on original return or as previously adjusted by the IRS . . . . .	19
20	Subtract line 19 from line 18 (see instructions) . . . . .	24,511
21	<b>Amount you owe.</b> If line 10, column C, is more than line 20, enter the difference and see instructions . . . . .	21
22	If line 10, column C, is less than line 20, enter the difference. . . . .	12,009
23	Amount of line 22 you want <b>refunded to you</b> . . . . .	12,009
24	Amount of line 22 you want <b>applied to your</b> 2001 <b>estimated tax</b>   24	

**Sign Here** Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

▶ Your signature Date      ▶ Spouse's signature. If a joint return, **both** must sign. Date

Paid Preparer's Use Only	Preparer's signature ▶	Date	Check if self-employed <input checked="" type="checkbox"/>	Prepare SSN or PTIN [REDACTED]
	Firm's name (or yours if self-employed), address, and ZIP code ▶	I.S. KROOP C.P.A. 17836 CHATSWORTH STREET GRANADA HILLS CA 91344		EIN 95-4243432 Phone no. 818-831-7881

Use the IRS label. Otherwise, please print

**SHERRY L. DONNELLY**  
 [Redacted Address]

Your social security number [Redacted]  
 Spouse's social security no. [Redacted]

**Presidential Election Campaign** Note. Checking "Yes" will not change your tax or reduce your refund.  
 Do you, or your spouse if filing a joint return, want \$3 to go to this fund?  Yes  No  Yes  No

**Filing Status**  
 1  Single  
 2  Married filing joint return (even if only one had income)  
 3  Married filing separate return. Enter spouse's SSN above & full name here. ▶  
 4  Head of household (with qualifying person). (See inst.) If the qualifying person is a child but not your dependent, enter child's name here. ▶  
 5  Qualifying widow(er) with dependent child (yr. spouse died ▶ ). (See instructions.)

**Exemptions**  
 6a  Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a. No. of boxes checked on 6a and 6b **1**  
 b  Spouse. No. of your children on 6c who:  
 • lived with you  
 • did not live with you due to divorce or separation (see inst.)  
 Dependents on 6c not entered above  
 Add numbers entered on lines above **1**

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input type="checkbox"/> if qualifying child for child tax credit (see inst.)

**d** Total number of exemptions claimed. **1**

**Income** 7 Wages, salaries, tips, etc. Attach Form(s) W-2 **7** 111,521

**Attach Forms W-2 and W-2G here. Also attach Form(s) 1099-R if tax was withheld.**

8a **8a** Taxable interest. Attach Schedule B if required. **8a** 714

b **8b** Tax-exempt interest. Do not include on line 8a **8b**

9 **9** Ordinary dividends. Attach Schedule B if required. **9** 6,007

10 **10** Taxable refunds, credits, or offsets of state and local income taxes (see instructions) **10** 745

11 **11** Alimony received **11**

12 **12** Business income or (loss). Attach Schedule C or C-EZ. **12**

13 **13** Capital gain or (loss). Attach Schedule D if required. If not required, check here  **13** 11,706

14 **14** Other gains or (losses). Attach Form 4797. **14**

15a **15a** Total IRA distributions **15a** **b** Taxable amount (see inst.) **15b**

16a **16a** Total pensions and annuities **16a** 17,186 **b** Taxable amount (see inst.) **16b**

17 **17** Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E **17**

18 **18** Farm income or (loss). Attach Schedule F **18**

19 **19** Unemployment compensation **19** 1,085

20a **20a** Social security benefits **20a** **b** Taxable amount (see inst.) **20b**

21 **21** Other income. SEE ATTACHED \$-40000 **21** -40,000

22 **22** Add the amounts in the far right column for lines 7 through 21. This is your total income **22** 91,778

**Adjusted Gross Income**

23 **23** IRA deduction (see instructions) **23**

24 **24** Student loan interest deduction (see instructions) **24**

25 **25** Medical savings account deduction. Attach Form 8853 **25**

26 **26** Moving expenses. Attach Form 3903. **26**

27 **27** One-half of self-employment tax. Attach Schedule SE **27**

28 **28** Self-employed health insurance deduction (see inst.) **28**

29 **29** Self-employed SEP, SIMPLE, and qualified plans. **29**

30 **30** Penalty on early withdrawal of savings. **30**

31a **31a** Alimony paid **b** Recipient's SSN ▶ **31a**

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32 **32** Add lines 23 through 31a. **32** 0

33 **33** Subtract line 32 from line 22. This is your adjusted gross income **33** 91,778

2 0 0 0

# Amended Individual Income Tax Return

## 540X

Fiscal year filers only: Enter the month and year end:

BE SURE TO COMPLETE AND SIGN SIDE 2

██████████ 3 DONN 00  
SHERRY L. DONNELLY

P  
AC  
A  
R  
RP

a Have you been advised that your original federal return has been, is being, or will be audited? . . . . .  Yes  No

**b Filing status claimed.**

On original return ▶  Single  Married filing joint return  Married filing separate return  Head of household  Qualifying widow(er)  
On this return ▶  Single  Married filing joint return  Married filing separate return  Head of household  Qualifying widow(er)

c If at the time you filed the return you are amending, your parent (or someone else) claimed you as a dependent on his/her return, check this box •

d If claiming head of household, enter name & relationship of qualifying person on:

	Original return	Amended return	
<b>Note:</b> If you are amending Form 540NR, see General Information D before continuing. If you are amending Form 540 2EZ, see the instructions for lines 1 through 6.	A. As originally reported/adjusted by FTB. See instructions	B. Net change: Explain on Side 2	C. Correct amount
1 a State Wages. See instructions . . . . .	1a 111,521.		• 1a 111,521.
b Federal AGI. See instructions . . . . .	1b 131,778.	-40,000.	1b 91,778.
2 CA adjustments. See specific instructions on Form 540A or Sch. CA (540 or 540NR).			
a State income tax refund. . . . .	2a 745.		2a 745.
b Unemployment compensation. . . . .	2b 1,085.		2b 1,085.
c Social security benefits . . . . .	2c		2c
d California nontaxable interest income . . . . .	2d		2d
e Other . . . . .	2e		2e
3 Total California adjustments. Combine line 2a through line 2e. See instructions. . . . .	3 -1,830.		• 3 -1,830.
4 California adjusted gross income. Combine line 1b and line 3. See instructions . . . . .	4 129,948.	-40,000.	• 4 89,948.
5 California itemized deductions or California standard deduction. See instructions . . . . .	5 17,069.	452.	• 5 17,521.
6 Taxable income. Subtract line 5 from line 4. If less than zero, enter -0- . . . . .	• 6 112,879.	-40,452.	6 72,427.
7 a Tax method used. See instructions . . . . .	7a TT		• 7a TT
b Tax. See instructions . . . . .	7b 8,743.	-3,764.	• 7b 4,979.
8 Exemption credits. See instructions . . . . .	8 51.	24.	• 8 75.
9 Subtract line 8 from line 7b. If less than zero, enter -0- . . . . .	9 8,692.	-3,788.	9 4,904.
10 Tax from Schedule G-1 and form FTB 5870A. See instructions . . . . .	10		• 10
11 Add line 9 and line 10. . . . .	11 8,692.	-3,788.	11 4,904.
12 Special credits and nonrefundable renter's credit. See instructions . . . . .	12		• 12
13 Subtract line 12 from line 11. . . . .	13 8,692.	-3,788.	13 4,904.
14 Other taxes (alternative minimum tax, credit recapture, etc.). See instructions . . . . .	14		• 14
15 Total tax. Add line 13 and line 14. If amending Form 540NR, see instructions. . . . .	15 8,692.	-3,788.	• 15 4,904.
16 California income tax withheld. See instructions. . . . .	16 5,994.		■ 16 5,994.
17 Excess California SDI (or VPDI) withheld. See instructions. . . . .	17		■ 17
18 Estimated tax payments and other payments. See instructions . . . . .	18 5,000.		■ 18 5,000.
19 Child and Dependent Care or Other Refundable Credits. See instructions . . . . .	19		■ 19
• 20	• 21	■ 22 \$	
23 Tax paid with original return plus additional tax paid after it was filed. Complete Side 2, Part I before entering amount here. . . . .	23		■ 23
24 Total payments. Add lines 16, 17, 18, 19, and 23 of column C. . . . .	24		24 10,994.
25 Overpaid tax, if any, as shown on original return or as previously adjusted by FTB. See instructions. . . . .	25		■ 25 2,302.
26 Subtract line 25 from line 24. If line 25 is more than line 24, see instructions . . . . .	26		26 8,692.
27 Voluntary contributions as shown on original return. See instructions. . . . .	27		• 27 0.
28 Subtract line 27 from line 26. . . . .	28		28 8,692.
29 AMOUNT YOU OWE. If line 15, column C is more than line 28, enter difference and see instructions . . . . .	29		■ 29 0.
30 Penalties/Interest. See instructions: Penalties 30a Interest 30b	30		■ 30c
31 REFUND. If line 15, column C is less than line 28, enter the difference. See instructions . . . . .	31		■ 31 3,788.

I S KROOP CPA, A PROFESSIONAL CORP  
17836 CHATSWORTH STREET  
GRANADA HILLS CA 91344  
818-831-7881

02-23-2010

SHERRY L. DONNELLY  
CLARK CANFIELD

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INSTRUCTIONS FOR FILING 2007 FEDERAL FORM 1040X

- .YOUR AMENDED RETURN SHOWS A REFUND OF \$1,966.00.
- .BOTH YOU AND YOUR SPOUSE MUST SIGN FORM 8879.
- .MAIL YOUR RETURN TO:

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE CENTER  
FRESNO, CA 93888-0422

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INSTRUCTIONS FOR FILING 2007 CALIFORNIA FORM 540X

- .YOU WILL RECEIVE A REFUND OF \$884.00.
- .BOTH YOU AND YOUR SPOUSE MUST SIGN YOUR RETURN AND ATTACH FEDERAL 1040.
- .MAIL YOUR RETURN TO:

FRANCHISE TAX BOARD  
PO BOX 942840  
SACRAMENTO, CA 94240-0002



Department of the Treasury -- Internal Revenue Service  
**Amended U.S. Individual Income Tax Return**

OMB No. 1545-0074

(Rev. November 2007)

▶ See separate instructions.

This return is for calendar year ▶ 2007 , or fiscal year ended ▶

PLEASE PRINT	Your first name and initial SHERRY L.	Last name DONNELLY	Your social security no. [REDACTED]	
	If a joint return, spouse's first name and initial CLARK	Last name CANFIELD	Spouse's SSN [REDACTED]	
	Home address (no. and street) or P.O. box if mail is not delivered to your home [REDACTED]		Apt. no. [REDACTED]	Phone number [REDACTED]
	If a foreign address, see the instructions. CALABASAS HILLS CA 91301-5325			

**A** If [REDACTED] above is different from [REDACTED] on your last return filed with the IRS, would you like us to change it in our records?  Yes  No

**B** Filing status. Be sure to complete this line. **Note.** You cannot change from joint to separate returns after the due date.

On original return ▶  Single  Married filing jointly  Married filing separately  Head of household  Qualifying widow(er)

On this return ▶  Single  Married filing jointly  Married filing separately  Head of household\*  Qualifying widow(er)

\* If the qualifying person is a child but not your dependent, see the instructions.

Use Part II on page 2 to explain any changes		A. Original amount or as previously adjusted (see inst.)	B. Net change -- amt. of increase or (decrease) -- explain in Part II	C. Correct amount
<b>Income and Deductions (see instructions)</b>				
1	Adjusted gross income (see instructions) . . . . .	58,760	-40,000	18,760
2	Itemized deductions or standard deduction (see instructions) . . . . .	23,441	3,000	26,441
3	Subtract line 2 from line 1 . . . . .	35,319	-43,000	-7,681
4	Exemptions. If changing, fill in Parts I and II on page 2 (see inst.) . . . . .	6,800		6,800
5	Taxable income. Subtract line 4 from line 3 . . . . .	28,519	-28,519	
6	Tax (see instructions). Method used in col. C QDCGTW . . . . .	2,217	-2,217	
7	Credits (see instructions) . . . . .	251	-251	
8	Subtract line 7 from line 6. Enter the result but not less than zero . . . . .	1,966	-1,966	
9	Other taxes (see instructions) . . . . .	3,864		3,864
10	Total tax. Add lines 8 and 9 . . . . .	5,830	-1,966	3,864
11	Federal income tax withheld and excess social security and tier 1 RRTA tax withheld. If changing, see instructions . . . . .	4,098		4,098
12	Estimated tax payments, including amount applied from prior year's return . . . . .	2,025		2,025
13	Earned income credit (EIC) . . . . .			
14	Additional child tax credit from Form 8812 . . . . .			
15	Credits: Federal telephone excise tax or from Forms 2439, 4136, 8885, or 8801 (if refundable) . . . . .			
16	Amount paid with request for extension of time to file (see instructions) . . . . .			
17	Amount of tax paid with original return plus additional tax paid after it was filed . . . . .			
18	Total payments. Add lines 11 through 17 in column C . . . . .			6,123

Refund or Amount You Owe		24
19	Overpayment, if any, as shown on original return or as previously adjusted by the IRS . . . . .	293
20	Subtract line 19 from line 18 (see instructions) . . . . .	5,830
21	<b>Amount you owe.</b> If line 10, column C, is more than line 20, enter the difference and see instructions . . . . .	
22	If line 10, column C, is less than line 20, enter the difference . . . . .	1,966
23	Amount of line 22 you want <b>refunded to you</b> . . . . .	1,966
24	Amount of line 22 you want <b>applied to your</b> <b>estimated tax</b>	

**Sign Here** Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

▶ Your signature \_\_\_\_\_ Date \_\_\_\_\_ ▶ Spouse's sig. If a joint return, **both** must sign. \_\_\_\_\_ Date \_\_\_\_\_

**Paid Preparer's Use Only**

Preparer's signature ▶ I S KROOP CPA, A PROFESSIONAL CORP  
 Date \_\_\_\_\_ Check if self-employed  Preparer's SSN or PTIN \_\_\_\_\_  
 Firm's name (or yours if self-employed), address, and ZIP code ▶ 17836 CHATSWORTH STREET E IN 20-4111000  
 GRANADA HILLS CA 91344 Phone no. 818-831-7881

For the year Jan. 1-Dec. 31, 2007, or other tax year beginning \_\_\_\_\_, 2007, ending \_\_\_\_\_, 20 OMB No. 1545-0074

**Label Use the IRS label.** Other-wise, please use \_\_\_\_\_

**SHERRY L. DONNELLY**  
**CLARK CANFIELD**

**Your social security number** \_\_\_\_\_  
**Spouse's social security no.** \_\_\_\_\_  
 your SSN(s) above.

Checking a box below will not change your tax or refund.

**Presidential Election Campaign** Check here if you, or your spouse if filing jointly, want \$3 to go to this fund (see instructions)  **You**  **Spouse**

**Filing Status**

1  Single  
 2  Married filing jointly (even if only one had income)  
 3  Married filing separately. Enter spouse's SSN above and full name here.   
 4  Head of household (with qualifying person). (See inst.) If qualifying person is a child but not your dependent, enter child's name here.   
 5  Qualifying widow(er) with dependent child (see inst.)

**Exemptions** If more than four dependents, see instructions.

6a  **Yourself.** If someone can claim you as a dependent, do not check box 6a  
 b  **Spouse**  
 c **Dependents:**

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> if qualifying child for child tax credit (see inst.)

Boxes checked on 6a and 6b **2**  
 No. of children on 6c who:  
 • lived with you \_\_\_\_\_  
 • did not live with you due to divorce or separation (see inst.) \_\_\_\_\_  
 Dependents on 6c not entered above \_\_\_\_\_  
 Add numbers on lines above **2**

d **Total number of exemptions claimed** **2**

<b>Income</b>	7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	43,416
	8a	Taxable interest. Attach Schedule B if required	8a	9,330
	b	Tax-exempt interest. Do not include on line 8a	8b	
	9a	Ordinary dividends. Attach Schedule B if required	9a	5,841
	b	Qualified dividends (see instructions)	9b	577
	10	Taxable refunds, credits, or offsets of state and local income taxes (see instructions)	10	629
	11	Alimony received	11	
	12	Business income or (loss). Attach Schedule C or C-EZ	12	27,348
	13	Capital gain or (loss). Attach Schedule D if required. If not required, check here. <input type="checkbox"/>	13	12,305
	14	Other gains or (losses). Attach Form 4797	14	
	15a	IRA distributions	15a	
	b	Taxable amount	15b	
	16a	Pensions and annuities	16a	
	b	Taxable amount	16b	
	17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	-35,321
	18	Farm income or (loss). Attach Schedule F	18	
	19	Unemployment compensation	19	1,706
	20a	Social security benefits	20a	
	b	Taxable amount (see inst.)	20b	
	21	Other income. SEE ATTACHMENT \$-41471	21	-41,471
	22	Add the amounts in the far right column for lines 7 through 21. This is your <b>total income</b>	22	23,783

<b>Adjusted Gross Income</b>	23	Educator expenses (see instructions)	23	
	24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106/2106-EZ	24	
	25	Health savings account deduction. Attach Form 8889	25	
	26	Moving expenses. Attach Form 3903	26	
	27	One-half of self-employment tax. Attach Schedule SE	27	1,932
	28	Self-employed SEP, SIMPLE, and qualified plans	28	
	29	Self-employed health insurance deduction (see instructions)	29	3,091
	30	Penalty on early withdrawal of savings	30	
	31a	Alimony paid b Recipient's SSN <input type="checkbox"/>	31a	
	32	IRA deduction (see instructions)	32	
	33	Student loan interest deduction (see instructions)	33	
	34	Tuition and fees deduction. Attach Form 8917	34	
	35	Domestic production activities ded. Attach Form 8903	35	
	36	Add lines 23 through 31a and 32 through 35	36	5,023
	37	Subtract line 36 from line 22. This is your <b>adjusted gross income</b>	37	18,760

**2007 OTHER INCOME SUMMARY ATTACHMENT**

SHERRY L. DONNELLY AND CLARK CANFIELD

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NET OPERATING LOSS	-1,471
RETURN FOCUS MEDIA W2 WAGES	-40,000
TOTAL TO FORM 1040 LINE 21	-41,471

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**2007 OTHER ADJUSTMENTS SUMMARY ATTACHMENT**

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**2007 OTHER CREDITS SUMMARY ATTACHMENT**

2007

Amended Individual Income Tax Return

540X

Fiscal year filers only: Enter month of year end: \_\_\_\_\_ year \_\_\_\_\_

BE SURE TO COMPLETE AND SIGN SIDE 2

██████████ DONN ██████████  
SHERRY L. DONNELLY  
CLARK CANFIELD

07 PBA

P  
AC  
A  
R  
RP

- a Have you been advised that your original federal return has been, is being, or will be audited? .....  Yes  No
- b Filing status claimed.  
On original return ▶  Single  Married/RDP filing joint  Married/RDP filing separately  Head of household  Qualifying widow(er)  
On this return ▶  Single  Married/RDP filing joint  Married/RDP filing separately  Head of household  Qualifying widow(er)
- c If for the year you are amending, you (or your spouse/RDP) can be claimed as a dependent on someone else's tax return, check the box ... •
- d If claiming head of household, enter name and relationship of qualifying person on: Original return \_\_\_\_\_  
Amended return \_\_\_\_\_

If you are amending Form 540NR, see General Information D before continuing. If you are amending Forms 540 2EZ or 540TEL, see the instructions for lines 1 through 6.		A. As originally reported/adjusted by FTB. See instructions	B. Net change: Explain on Side 2	C. Correct amount
1 a	State Wages. See instructions	43,416.		• 1a 43,416.
b	Federal AGI. See instructions	58,760.	-40,000.	1b 18,760.
2	CA adjustments. See specific instructions on Form 540A or Sch. CA (540).			
a	California nontaxable interest income			2a
b	State income tax refund	629.		2b 629.
c	Unemployment compensation	1,706.		2c 1,706.
d	Social Security benefits			2d
e	Other (list)	11,792.		2e 11,792.
3	Total California adjustments. Combine line 2a through line 2e. See instructions	9,457.		• 3 9,457.
4	California adjusted gross income. Combine line 1b and line 3. See instructions	68,217.	-40,000.	• 4 28,217.
5	California itemized deductions or California standard deduction. See instructions	21,857.	3,000.	• 5 24,857.
6	Taxable income. Subtract line 5 from line 4. If less than zero, enter -0- . . . . . •	46,360.	-43,000.	6 3,360.

7 a Tax method used for Column C. See instructions		<input checked="" type="checkbox"/> TT	<input type="checkbox"/> FTB 3800	<input type="checkbox"/> FTB 3803	<input checked="" type="checkbox"/> 7a
b	Tax. See instructions	1,072.		-1,038.	• 7b 34.
8	Exemption credits. See instructions	188.			• 8 188.
9	Subtract line 8 from line 7b. If less than zero, enter -0-	884.		-884.	9 0.
10	Tax from Schedule G-1 and form FTB 5870A. See instructions				• 10
11	Add line 9 and line 10	884.		-884.	11
12	Special credits and nonrefundable renter's credit. See instructions				• 12
13	Subtract line 12 from line 11	884.		-884.	13
14	Other taxes (alternative minimum tax, credit recapture, etc.). See instructions				• 14
15	Mental Health Services Tax, see instructions				• 15
16	Total tax. Add line 13, line 14, and line 15. If amending Form 540NR, see instructions	884.		-884.	• 16 0.
17	California income tax withheld. See instructions	1,287.			■ 17 1,287.
18	California real estate or nonresident withholding. See instructions				■ 18
19	Excess California SDI (or VPD) withheld. See instructions				■ 19
20	Estimated tax payments and other payments. See instructions				■ 20
21	Child and Dependent Care Expenses or Other Refundable Credits. See inst				■ 21

• 22 \_\_\_\_\_ • 23 \_\_\_\_\_ ■ 24 \$ \_\_\_\_\_

25 Tax paid with original return plus additional tax paid after it was filed ..... ■ 25 \_\_\_\_\_

26 Total payments. Add lines 17, 18, 19, 20, 21, and 25 of column C ..... 26 1,287.

Your name: SHERRY L. DONNELLY AND CLARK CANFIELD Your SSN or ITIN: [REDACTED]

Table with 3 columns: Line number, Description, and Amount. Includes lines 27-34 for tax calculations and refund.

Part I Nonresidents or Part-Year Residents Only

Taxable years 2003 and after, enter amounts from your revised Short or Long Form 540NR. Your amended return cannot be processed without this information. For all taxable years attach your revised Short or Long Form 540NR and Schedule CA (540NR).

Table with 3 columns: Line number, Description, and Amount. Includes lines 1-10 for income and tax adjustments.

Part II Explanation of Changes

- 1 Enter name(s) and address as shown on original return below... SHERRY L. DONNELLY 4118 [REDACTED]
2 a If you checked the box for "Yes," on Side 1, question a, are you filing this Form 540X to report a final federal determination?
b If the answer to question 2a above is "Yes," are you filing this Form 540X to report additional tax due within six months of the final federal determination?
c If the answer to question 2a above is "Yes," what is the date and tax change amount of the final federal determination?
3 Have you been advised that your original California return has been, is being, or will be audited?
4 Did you file an amended return with the Internal Revenue Service on a similar basis?
5 Explain your changes to income, deductions, and credits in the space provided below.

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return including accompanying schedules and statements and to the best of my knowledge and belief, this amended return is true, correct, and complete.

Sign Here section containing signature lines for taxpayer, spouse, and preparer, along with date and SSN/PTIN fields.

Where to File Form 540X:

Do not file a duplicate amended return unless one is requested. This may cause a delay in processing your amended return and any claim for refund. If you are due a refund or have no amount due, mail your return to: FRANCHISE TAX BOARD, PO BOX 942840, SACRAMENTO CA 94240-0002

LAW OFFICES

**R. THOMAS WIRE**

LOS ANGELES OFFICE  
6380 WILSHIRE BLVD., STE 1250  
LOS ANGELES, CALIFORNIA 90048  
TELEPHONE (323) 655-1506  
FACSIMILE (323) 655-0351

A PROFESSIONAL CORPORATION  
WESTLAKE GARDENS, SUITE 100  
2535 TOWNSGATE ROAD  
WESTLAKE VILLAGE, CALIFORNIA 91361-5981  
TELEPHONE (805) 497-1400  
FACSIMILE (805) 497-0101

NEVADA OFFICE  
512 SOUTH TONOPAH DRIVE STE. 100  
LAS VEGAS, NEVADA 89106  
TELEPHONE (702) 734-3936  
FACSIMILE (702) 734-7199

REPLY TO: WESTLAKE VILLAGE

January 3, 2008

SHERRY DONNELLY



**Re: John R. Pringle, Chapter 7 Trustee vs. Sherry Donnelly**  
**USBC Case No.: AD02-02665VZ**

Dear Sherry:

Enclosed herewith is a fully executed copy of Settlement and Mutual Release Agreement along with a copy of the Bankruptcy Court Order approving the settlement. The matter is now completed. You will probably need copies of the above documents for your tax accountant.

Best wishes to you and Clark for a prosperous and healthy New Year.

Sincerely,

LAW OFFICES OF R. THOMAS WIRE  
A Professional Corporation

A handwritten signature in black ink, appearing to be 'R. Thomas Wire', written over a horizontal line.

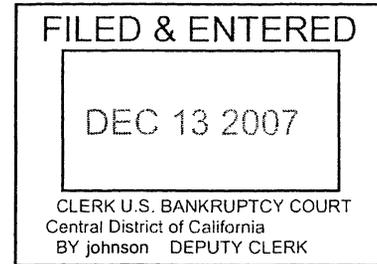
R. THOMAS WIRE

RTW:slb

Enclosure: as stated

1 Leonard M. Shulman - Bar No. 126349  
Lynda T. Bui - Bar No. 201002  
2 Samuel J. Romero - Bar No. 232824  
**SHULMAN HODGES & BASTIAN LLP**  
3 26632 Towne Centre Drive, Suite 300  
Foothill Ranch, California 92610-2808  
4 Telephone: (949) 340-3400  
Facsimile: (949) 340-3000

5 Special Collection Counsel for  
6 John P. Pringle, Chapter 7 Trustee



7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**  
10

11 In re  
12 **FOCUS MEDIA, INC.,**  
13  
14 Debtor.

Case No. 2:00-38197-VZ

Chapter 7

**ORDER APPROVING SETTLEMENT AND  
COMPROMISE OF DISPUTES BETWEEN  
THE ESTATE AND THE FOLLOWING  
JUDGMENT DEBTORS: (1) SHERRY  
DONNELLY, (2) JON L. CRAPO; AND  
AUTHORIZING PAYMENT OF  
COMPENSATION TO THE TRUSTEE'S  
SPECIAL COLLECTION COUNSEL**

[No Hearing Set Pursuant To  
Local Bankruptcy Rule 9013-1(g)]

15  
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20 The Court having read and considered the Motion marked on the Court's docket for this  
21 bankruptcy case as Docket No. 1606 and entitled "Motion for Order Approving Settlement and  
22 Compromise of Disputes Between the Estate and the Following Judgment Debtors: (1) Sherry  
23 Donnelly, (2) Jon L. Crapo; and for Order Authorizing Payment of Compensation to the  
24 Trustee's Special Collection Counsel; Memorandum of Points and Authorities and the  
25 Declarations of John P. Pringle and Lynda T. Bui in support" ("Motion") filed by John P.  
26 Pringle, Chapter 7 Trustee ("Trustee") for the bankruptcy estate of Focus Media, Inc. and it  
27 appearing from the Declaration of Lynda T. Bui filed concurrently herewith that proper notice of  
28 the Motion has been given and good cause has been shown, it is hereby

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**ORDERED** that the Motion is granted as follows:

1. The Trustee is authorized to settle and compromise the disputes with Sherry Donnelly pursuant to the terms and conditions as set forth in the Settlement and Mutual Release Agreement, a copy of which is **attached to the Motion as Exhibit 1**.

2. The Trustee is authorized to settle and compromise the disputes with Jon L. Crapo pursuant to the terms and conditions as set forth in the Settlement and Mutual Release Agreement, a copy of which is **attached to the Motion as Exhibit 2**.

3. The Trustee is authorized to sign any and all documents necessary to effectuate the terms of the settlements and compromise with Sherry Donnelly and Jon L. Crapo, including but not limited to the Settlement and Mutual Release Agreements attached as Exhibits 1 and 2 to the Motion.

4. The Trustee is authorized to pay Shulman Hodges & Bastian LLP its contingency fee in the total amount of \$20,997.90, and reimbursement of expenses in the amount of \$1,012.33.

#####



DATED: December 13, 2007

United States Bankruptcy Judge

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Foothill Ranch, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 26632 Towne Centre Drive, Suite 300, Foothill Ranch, California 92610.

On **December 6, 2007**, I served the documents named below on the parties as follows:

DOCUMENT(S) SERVED:           **ORDER APPROVING SETTLEMENT AND COMPROMISE OF DISPUTES  
BETWEEN THE ESTATE AND THE FOLLOWING JUDGMENT  
DEBTORS: (1) SHERRY DONNELLY, (2) JON L. CRAPO; AND  
AUTHORIZING PAYMENT OF COMPENSATION TO THE TRUSTEE'S  
SPECIAL COLLECTION COUNSEL**

SERVED UPON:                   **SEE THE ATTACHED SERVICE LIST**

- (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Foothill Ranch, California. I am readily familiar with the practice of Shulman Hodges & Bastian LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY FACSIMILE) Pursuant to C.R.C. 2009(i), I either caused, or had someone cause, the transmitting machine to properly transmit the attached documents to the facsimile numbers shown on the service list. The above-referenced document was transmitted by facsimile transmission and the transmission was reported as completed and without error.
- (BY FEDERAL EXPRESS OR AIRBORNE EXPRESS) I am readily familiar with the practice of Shulman Hodges & Bastian LLP for collection and processing of documents for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by such overnight delivery company for overnight delivery.
- (BY PERSONAL SERVICE) I delivered to an authorized courier or driver authorized by ASAP Corporate Service to receive documents to be delivered on the same date. A proof of service signed by the authorized courier will be filed forthwith.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on **December 6, 2007**, at Foothill Ranch, California.

/s/ Lorre E. Clapp  
\_\_\_\_\_  
Lorre E. Clapp

**SERVICE LIST FOR ENTERED ORDER**

<b><u>SERVED ELECTRONICALLY</u></b>	<b><u>SERVED BY U.S. MAIL</u></b>
<p data-bbox="170 331 354 359"><b><u>Interested Party</u></b></p> <p data-bbox="170 363 526 510">United States Trustee Ronald Reagan Federal Building and United States Court House 411 West Fourth Street Suite 9041 Santa Ana, CA 92701-8000</p> <p data-bbox="170 546 451 573"><b><u>Attorneys for the Trustee</u></b></p> <p data-bbox="170 577 558 695">Lynda T. Bui Esq. Shulman Hodges &amp; Bastian LLP 26632 Towne Centre Drive Suite 300 Foothill Ranch, CA 92610-2808</p> <p data-bbox="170 730 375 758"><b><u>Chapter 7 Trustee</u></b></p> <p data-bbox="170 762 537 879">John P Pringle, Trustee Roquemoire, Pringle &amp; Moore, Inc. 6055 East Washington Blvd., # 608 Los Angeles, CA 90040-2427</p>	



01 0000120773

09/25/07

\$40,000.00

Cashier's Check

\*\* Forty Thousand and 00/100 DOLLARS \*\*

SHULMAN, HODGES, BASTIAN, LLP  
CLIENT TRUST FUND

Member Copy  
NON-NEGOTIABLE

RE:SHERRY L DONNELLY

NON-NEGOTIABLE    Chk 01-0000120773    09/25/07    5:22pm    Br 0080-0339    Amt 40,000.00

NOTICE TO CASHIER: BE SURE WATERMARK IS ON REVERSE SIDE BEFORE CASHING



**KINECTA**  
FEDERAL CREDIT UNION  
1440 ROSECRANS AVE.  
MANHATTAN BEACH, CA 90266  
800.854.9846



**CASHIER'S CHECK**

9078073222  
DATE  
09/25/07

THIS CHECK VOID 90  
DAYS AFTER ISSUE

01 0000120773

\$40,000.00

\*\* Forty Thousand and 00/100 DOLLARS \*\*

KINECTA FEDERAL CREDIT UNION

PAY  
TO THE  
ORDER  
OF

SHULMAN, HODGES, BASTIAN, LLP  
CLIENT TRUST FUND

RE:SHERRY L DONNELLY

*Sherry L Donnelly*  
*[Signature]*  
Two Signatures Required for Checks Over \$10,000.00



Sherry Donnelly



September 25, 2007

Law Offices of R. Thomas Wire  
A Professional Corporation  
Westlake Gardens, Suite 100  
2535 Townsgate Road  
Westlake Village, CA. 91361

Dear Tom;

Per your directive I have enclosed a cashier's check in the amount of forty thousand dollars payable to Shulman, Hodges, Bastian, LLP, Client Trust Fund. This check is to satisfy in full the bankruptcy courts judgment against me regarding my former employer Focus Media, Inc.

Very Truly,

A handwritten signature in cursive script that reads "Sherry Donnelly".

Sherry Donnelly

## SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement (the "Agreement"), dated for identification purposes as of **September 28, 2007**, is entered into by and between John P. Pringle, Chapter 7 Trustee ("Trustee") for the bankruptcy estate ("Estate") of In re Focus Media, Inc., ("Debtor"), Case No. 2: 00-38197 VZ on the one hand, and Sherry Donnelly ("Donnelly"), on the other hand. The Trustee and Donnelly are collectively referred to herein as the "Parties" or individually as a "Party."

### RECITALS

This Agreement is entered into based upon the following facts:

1. An involuntary petition for relief under Chapter 7 of the Bankruptcy Code was filed against the Debtor on October 6, 2000.
2. Pursuant to Court Order entered October 27, 2000, the Court appointed John P. Pringle as the interim trustee for the Debtor's Estate.
3. The Order for Relief under Chapter 7 of the Bankruptcy Code was entered by the Court on or about October 22, 2001.
4. Prior to the Debtor's bankruptcy case, Donnelly was the Accounting Manager for the corporate Debtor.
5. On or about October 24, 2002, the Trustee filed a Complaint for Avoidance of Post-Petition Transfers under Bankruptcy Code Section 549 against Donnelly seeking recovery of post-petition payments made by the Debtor to Donnelly in the amount of \$42,532.81 ("Transfers"), thereby commencing Adversary Proceeding Case No. 2:02-02665 VZ ("Action").
6. On January 3, 2003, Donnelly filed an Amended Answer to the Complaint wherein she denied that the Trustee could avoid the Transfers under any legal theory.
7. On May 17, 2004, the Court entered that certain Judgment in Favor of Plaintiff Trustee and Against Defendant Sherry Donnelly awarding the Trustee the principal sum of \$42,532.81 ("Judgment").
8. On June 2, 2004, Donnelly filed a Notice of Appeal from the Judgment ("Appeal").

9. On June 10, 2004, the Trustee filed his objection to the jurisdiction of the Bankruptcy Appellate Panel and the Appeal was transferred to the United States District for the Central District of California (“District Court”) and designated Case No. CV 04-04823 AHS.

10. The Trustee has commenced enforcement and/or collection actions on the Judgment and has served on Donnelly as a judgment debtor Interrogatories which Donnelly has not yet answered. In addition, the Trustee has caused an Abstract of Judgment to be issued and filed a Notice of Judgment Lien with the California State as follows:

a. On September 17, 2004, the Court issued an Abstract of Judgment.

b. On July 27, 2007, the Trustee caused a UCC Notice of Judgment Lien to be filed with the California Secretary of State, Filing No. 07-7123782562 (“UCC Judgment Lien”)

11. On March 16, 2007, the District Court entered its Civil Minutes of in Chambers Order summarily affirming Judgment of the Bankruptcy Court

12. As of August 29, 2007, the outstanding principal and accrued interest on the Judgment owed to the Trustee by Donnelly was at least \$45,717.18. This amount does not include additional costs that have been incurred by the Estate in seeking to collect on the Judgment.

13. The Parties hereto agree that it is in their best interest to resolve their disputes by way of settlement, rather than through litigation, and therefore it is their intention and desire at this time to settle their disputes in the manner and upon the terms and conditions set forth in this Agreement, it being specifically understood and agreed that any and all acts which are to be performed pursuant to this Agreement, are not to be and will not be construed as a concession and/or admission by any of the Parties hereto, of the truth of any of the allegations which have been made against any of the Parties hereto.

14. The Parties hereto desire to fully and completely settle all disputes, claims, demands and causes of action heretofore arising which the Parties hereto have or may have as to one another, including without limitation all matters arising out of or connected with, or incidental to the Debtor’s bankruptcy case and the Action, up to and including the date of this Agreement, without limitation.

15. The recitals of facts set forth herein are for context and background information and are intended to reflect a composite of divergent positions of the Parties hereto and are not to be taken as concessions, admissions of guilt or liability for claims asserted, or used as evidence for any purpose either for or against the interest of any of the Parties hereto.

#### THE SETTLEMENT

**WHEREFORE**, in consideration of the promises, the mutual obligations and undertakings set forth hereunder, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. Effective Date of Agreement. This Agreement shall become effective (“Effective Date”) and binding on the Parties hereto upon the date of a final order of the Bankruptcy Court approving this Agreement (“Final Order”).<sup>1</sup> If there has been no Final Order entered, then this Agreement shall not become effective and shall be null and void.

2. Payment to the Estate in Full Satisfaction of the Judgment. In full satisfaction of the outstanding amounts due on the Judgment, Donnelly shall pay to the Trustee on behalf of the Estate \$40,000 (“Settlement Payment”) which represents a 12.51% discount of the amount due on the Judgment as of August 29, 2007. The Settlement Payment shall be made payable to “John P. Pringle, Chapter 7 Trustee for the bankruptcy estate of Focus Media, Inc.,” and delivered to the Trustee’s counsel, Shulman Hodges & Bastian LLP to the attention Samuel J. Romero concurrent with the execution of this Agreement.

3. Trustee’s Agreement to Cease Enforcement and/or Collection on the Judgment. Upon execution of this Agreement and the Trustee’s receipt of the full Settlement Payment in immediate available funds, the Trustee agrees he shall immediately cease any and all actions to enforce or collect on the

---

<sup>1</sup> Final Order means an order of the Bankruptcy Court approving this Agreement which has not been reversed, stayed, modified, or amended, and as to which: (a) the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceeding for reargument or rehearing shall then be pending; or (b) any right to appeal, petition for certiorari, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Trustee; or (c) any appeal, petition for certiorari, reargument or rehearing has been resolved by the highest court to which the order or judgment was appealed timely or from which certiorari, reargument, or rehearing was sought.

Judgment. The Trustee agrees that he will only proceed with an action to enforce or collect on the Judgment in the event he does not receive the full Settlement Payment in immediately available funds.

4. Waiver of Claims. Donnelly agrees and stipulates to waive any right to distribution that may be made by the Estate to creditors and specifically hereby waives the right to recover on any and all claims that have been or may be asserted by Donnelly against the Estate. Donnelly further waives the right to file a proof of claim in the Debtor's bankruptcy case pursuant to Bankruptcy Code 502(h) due to any payment to the Trustee under this Agreement.

5. Mutual Waiver of Claims. Except as set forth herein, the Parties mutually and generally waive all claims against each other. The Trustee does not know of and is not investigating any other claims against Donnelly related to the Debtor's bankruptcy case. Donnelly does not know of and is not investigating any claims against the Trustee and/or the Estate.

6. Complete Release of All Claims by Trustee. Except for as provided in this Agreement, in consideration for the terms of this Agreement, upon Bankruptcy Court approval of this Agreement, the Trustee hereby releases and forever discharges the Donnelly and each of her representatives, agents, predecessors, successors, heirs, assigns, attorneys, subsidiaries, affiliated entities and all persons acting by, through, under or in concert with them, (collectively the "Donnelly Released Parties"), from any and all claims, demands, causes of action, obligations, damages, costs, penalties and liabilities of any nature whatsoever, whether or not known or unknown, suspected or unsuspected, which the Trustee ever had, now has, or may claim to have against any of the Donnelly Released Parties, by reason of any act or omission concerning any matter related to the Complaint, cause or thing, including without limitation any claims arising out of or concerning facts, circumstances, relationships and/or transactions arising and/or occurring prior to the effective date of this Agreement related to the allegations set forth in the Complaint (collectively the "Trustee Released Claims").

7. Waiver of Section 1542 by Trustee. With respect to the claims made the subject of release and discharge pursuant to this Agreement, the Trustee hereby acknowledges the provisions of California Civil Code section 1542, which states: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH

THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. The Trustee hereby waives any and all rights which may be conferred upon him by virtue of Civil Code section 1542 or any similar provision or body of law. In this regard, the Trustee acknowledges that facts in addition to or different from those which are now known or believed to exist may hereafter be discovered with respect to the subject matter of the Trustee Released Claims and that this release will remain fully enforceable notwithstanding such discovery.

8. Complete Release of All Claims by Donnelly. In consideration for the terms of this Agreement and the payment hereunder, upon Bankruptcy Court approval of this Agreement, Donnelly hereby releases and forever discharges the Trustee, the Estate and each of their representatives, agents, predecessors, successors, heirs, assigns, attorneys, subsidiaries, and all persons acting by, through, under or in concert with them, (collectively the "Trustee Released Parties"), from any and all claims, demands, causes of action, obligations, damages, costs, penalties and liabilities of any nature whatsoever, whether or not known or unknown, suspected or unsuspected, which Donnelly ever had, now have, or may claim to have against any of the Trustee Released Parties, by reason of any act or omission concerning any matter related to the Action and the Judgment, including without limitation any claims arising out of or concerning facts, circumstances, relationships and/or transactions arising and/or occurring prior to the effective date of this Agreement related to the allegations set forth in the Complaint (collectively the "Donnelly Released Claims").

9. Waiver of Section 1542 by Donnelly. With respect to the claims made the subject of release and discharge pursuant to this Agreement, Donnelly hereby acknowledges the provisions of California Civil Code section 1542, which states: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. Donnelly hereby

waives any and all rights which may be conferred upon them by virtue of Civil Code section 1542 or any similar provision or body of law. In this regard, Donnelly acknowledges that facts in addition to or different from those which are now known or believed to exist may hereafter be discovered with respect to the subject matter of the Donnelly Released Claims and that this release will remain fully enforceable notwithstanding such discovery.

10. Release of the Abstract of Judgment Lien. Within ninety days of the date of entry of Final Order approving this Agreement, the Trustee shall provide Donnelly with an Acknowledgment of Full Satisfaction of Judgment which may be utilized by Donnelly in order to terminate and release any liens created by the Abstract of Judgment.

11. Release of the UCC Judgment Lien. Within ninety days of the date of entry of Final Order approving this Agreement, the Trustee shall provide Donnelly with release of the UCC Judgment Lien which may be filed by Donnelly with California Secretary of State in order to terminate and release any liens created by the filing of the UCC Judgment Lien.

12. Severability. If any provision of this Agreement is held by any court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, then the remaining portions of this Agreement will nonetheless remain in full force and effect, unless such portion of the Agreement is so material that its deletion would materially violate the overall transactions, settlements and releases intended by this Agreement.

13. Binding. This Agreement shall be binding on the Parties hereto when each such party has executed at least one counterpart, subject only to Bankruptcy Court approval.

14. Authorization to Execute: Each Party hereto executing this Agreement on behalf of a corporation, partnership, individual or entity hereby represent and warrants that he/she has the authority to execute this Agreement and bind such entity to the terms and conditions set forth herein.

15. Attorneys' Fees and Costs. All Parties hereto shall bear their own attorneys' fees, expenses, and costs incurred in connection with the disputes between the Parties hereto and in the preparation of this Agreement. In the event of any action or proceeding brought by either Party against the other under this

Agreement, the prevailing Party shall be entitled to recover for the fees of its attorneys in such action or proceeding, including costs of appeal, if any, in such amount as the court may adjudge reasonable as attorneys' fees.

16. Consultation with Counsel. All Parties hereto acknowledge and represent that they have consulted with legal counsel before entering into this settlement and executing this Agreement. The Parties, and each of them, understand the meaning of this Agreement and expressly consent that this Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to the release of unknown and unsuspected claims, demands, and causes of action. All Parties acknowledge that they are executing and delivering this Agreement after having received from legal counsel of their own choosing legal advice as to their respective rights hereunder and the legal effect hereof.

17. Reliance. Except as set forth herein, all Parties hereto acknowledge that they have relied solely upon their own judgment, belief and knowledge of the existence, nature and extent of each claim, demand, or cause of action that each Party may have against the other, and that each such Party has not been influenced to any extent in entering into this Agreement by any representation or statement regarding any such claim, demand or cause of action made by any other Party hereto.

18. Execution of Additional Documents. The Parties agree that they will execute any and all additional documents and take all additional steps which may be necessary or convenient to consummate this settlement and accomplish the purposes thereof.

19. Integration of Entire Agreement. This Agreement contains the entire agreement of the Parties, and no representations, warranties, inducements or promises not included herein by express provision or contained in a document or instrument identified herein and executed contemporaneously herewith shall be binding on any Party hereto.

20. Counterparts. This Agreement may be executed in any number of original, fax, scanned or copied counterparts, and all counterparts shall be considered together as one agreement. A faxed, scanned or copied counterpart shall have the same force and effect as an original signed counterpart. Each of the Parties hereby expressly forever waives any and all rights to raise the use of a fax machine or electronic

scanned document to deliver a signature, or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a fax machine or electronic scanned document, as a defense to the formation of a contract.

21. Binding. This Agreement shall be binding on the Parties hereto when each such Party has executed at least one counterpart, subject only to Bankruptcy Court approval.

22. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective Parties and their heirs, executors, administrators, agents, representatives, successors and assigns.

23. Appropriate Notice. Trustee shall cause appropriate notice of this Agreement to be given to Parties entitled to such notice under the United States Bankruptcy Code and Rules and pursuant to Bankruptcy Court Order.

24. Bankruptcy Court Approval. This Agreement is subject to approval by the United States Bankruptcy Court for the Central District of California, Los Angeles Division and entry of a Final Order and termination of any appeals related thereto in the Debtor's bankruptcy case. In the event the Bankruptcy Court does not approve this Agreement, there shall be no releases as provided in this Agreement and all claims will be restored as originally asserted by and between the Parties, subject to any and all defenses and counter-claims held by the Parties.

25. Governing Law. This Agreement is to be governed by and construed in accordance with federal bankruptcy law, to the extent applicable, and where state law is implicated, the laws of the State of California shall govern.

26. Time of the Essence. To the extent that performance is to be governed by time, time shall be deemed to be of the essence hereof.

27. Jurisdiction of the Bankruptcy Court. Should any dispute arise regarding this Agreement, the United States Bankruptcy Court for the Central District of California, Los Angeles Division shall have exclusive jurisdiction to determine the same. Further, if a dispute arises, such dispute may initially be

resolved through any mediation program pending in the Bankruptcy Court for the Central District of California

28. Trustee Capacity. The Trustee is signing this Agreement in his capacity solely as Chapter 7 Trustee of the Debtor's Estate. Nothing contained herein shall in any way impute liability to the Trustee personally or anyone acting on his behalf.

29. Headings. The headings of all sections of this Agreement are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction or interpretation of any term or provision hereof.

30. Ownership of Claims. Each of the Parties to this agreement expressly warrants and represents that it is the sole and lawful owner of all right, title and interest in and to every claim and other matter which it purports to release herein, and it has not assigned or transferred, or purported to assign or transfer to any person or entity any claims or other matters herein released.

**[SIGNATURES ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first set forth above.

John P. Pringle  
Solely in his capacity as the Chapter 7 Trustee  
for the bankruptcy estate of Focus Media, Inc.

*Sherry Donnelly*  
Sherry Donnelly

APPROVED AS TO FORM.

SHULMAN HODGES & BASTIAN LLP

Leonard M. Shulman  
Lynda T. Bui  
Samuel J. Romero  
Attorneys for John P. Pringle  
Solely in his capacity as the Chapter 7 Trustee  
for the bankruptcy estate of Focus Media, Inc.,

LAW OFFICES OF R. THOMAS WIRE

*R. Thomas Wire*  
R. Thomas Wire  
Attorneys for Sherry Donnelly

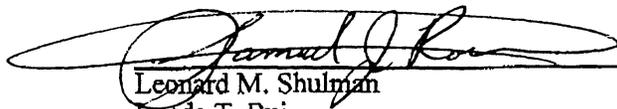
IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first set forth above.

  
\_\_\_\_\_  
John P. Pringle  
Solely in his capacity as the Chapter 7 Trustee  
for the bankruptcy estate of Focus Media, Inc.

\_\_\_\_\_  
Sherry Donnelly

APPROVED AS TO FORM.

**SHULMAN HODGES & BASTIAN LLP**

 10-11-07  
\_\_\_\_\_  
Leonard M. Shulman  
Lynda T. Bui  
Samuel J. Romero  
Attorneys for John P. Pringle  
Solely in his capacity as the Chapter 7 Trustee  
for the bankruptcy estate of Focus Media, Inc.,

**LAW OFFICES OF R. THOMAS WIRE**

\_\_\_\_\_  
R. Thomas Wire  
Attorneys for Sherry Donnelly

Sherry Donnelly

May 15, 2009

State Board of Equalization  
Board Proceedings Division  
450 N. Street  
PO Box 942879  
Sacramento, CA. 94279-0081

The following is my response to the Franchise Tax Board brief regarding my **appeal case ID # 474206** for a refund. My claim for a refund of \$3,788.00 from my individual income tax for the year 2000 was denied as my claim for a refund was filed outside of the statute of limitations.

Again I must state that I had no ability to file any earlier than I did. The U.S. District Bankruptcy Court filed a judgment against me on May 17<sup>th</sup>, 2004 regarding my former employer, Focus Media, Inc. regarding money that was paid to me as severance and earned vacation pay. The judgment was appealed, and on March 15, 2007 the Court affirmed the judgment of the Bankruptcy Court. I made payment in the amount of \$40,000 to the court on September 25<sup>th</sup>, 2007.

All of these dates were out of the general four-year period; however, none of this was within my control. Therefore I again request that my amended return be approved and accepted.

The Franchise Tax Boards brief states that I may wish to consult a tax professional regarding amending my individual income tax for the year the monies were paid to the Bankruptcy Court. It would be unfair to me to amend my 2007 tax return vs. the year 2000. I paid taxes in 2000 at a substantially higher tax rate, than I did in 2007. Prior to my employers' bankruptcy in 2000, I worked 10 months and in addition received the severance pay this put me in a much higher tax bracket compared to 2007. I believe that paying the taxes to the Franchise Tax board at a higher rate than it would be refunded to me punishes me for something that was completely out of my control. The only equitable decision would be to refund the money at the same rate that I paid the tax at.

Sincerely,

  
Sherry Donnelly

Enclosure (s):

Civil Minutes – General: 3-15-07

Abstract of Judgment: 9-17-08

Settlement Agreement: 10-01-07

Franchise Tax Board Responding Brief: 4-15-09

USPS- Confirmed delivery service.

Sherry Donnelly

December 4, 2008

State Board of Equalization  
Board of Proceedings Division  
450 N. Street  
PO Box 942879  
Sacramento, CA. 94279-0081

I am requesting an appeal of your decision to disallow my claim for a refund of \$3,788.00 from by individual income tax for the year 2000.

Your reason for not allowing my claim was that I filed more than four years after I filed my tax return. I believe my claim involves an item with a filing period in excess of the general four-year period.

The U.S. District Bankruptcy Court filed a judgment against me on May 17<sup>th</sup>, 2004 regarding my former employer, Focus Media, Inc. regarding money that was paid to me as severance pay. This judgment was appealed, and on March 15, 2007 the Court affirmed the judgment of the Bankruptcy Court. I made payment to the court on September 25<sup>th</sup>, 2007. I had no ability to file any earlier than I did.

All of these dates were out of the general four-year period; however, none of this was within my control. Therefore I would request that my amended return be approved and accepted.

Sincerely,

  
Sherry Donnelly

Enclosure (s):

Civil Minutes – General: 3-15-08

Abstract of Judgment: 9-17-08

Settlement Agreement: 10-01-07

Amended Individual Income Tax Return form 540X

USPS – Confirmed delivery service.



STATE OF CALIFORNIA  
**FRANCHISE TAX BOARD**  
 PO Box 942840  
 Sacramento CA 94240-0040

732: K4241

SHERRY L DONNELLY  
 [REDACTED]

Date: 12/1/2008  
 Account No: 120-45228-74  
 DLN: 08-63109402  
 Tax Year: 2000

We denied your claim for refund for tax year 2000.

Due to the statute of limitations, you must file your claim for refund or credit within the later of:

- Four years from the return's original due date
- Four years from the date the return was filed, as long as it was filed by the extended due date for that tax year
- One year of the date of payment

Your claim received 6/15/2008 was not filed within the statute of limitations. Thus, your refund cannot be allowed.

If you believe this action is incorrect, please follow the appeal procedures described on the enclosed FTB 1084, Personal Income Tax Denial Claim for Refund Information. Be sure to provide the information requested in the appeal procedures.

File your appeal to the Board of Equalization by 3/2/2009. If you do not file your appeal with the Board of Equalization by this date, our action will become final.

TAXPAYER SERVICES  
 Enclosure – FTB 1084

**TELEPHONE AND INTERNET ASSISTANCE**  
 (For state income tax issues unrelated to your appeal)

From within the United States, call .....(800) 852-5711  
 From outside the United States, call (not toll-free).....(916) 845-6500

Website at: [www.ftb.ca.gov](http://www.ftb.ca.gov)

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## LEGAL MALPRACTICE: DID THE STATUTE OF LIMITATIONS REALLY EXPIRE?

By John P. Blumberg

This article appeared in the "Los Angeles Daily Journal."

A case involving the failure of an attorney to file a case before the expiration of the statute of limitations is sometimes called a "blown statute case." A blown statute would seem to be a slam-dunk legal malpractice case, assuming that the underlying case would have been won. However, there are many instances when the statute of limitations is tolled or extended. For example, was the previous lawyer run over while on the way to the courthouse? Or was his former client knocked unconscious? Perhaps his former client's negligent surgeon was out-of-state for several weeks, or declared bankruptcy. The expiration of one year does not necessarily mean that the plaintiff's rights were lost.



If a client presents a case that is based upon the failure of the previous attorney to file a complaint before the statute of limitations expired, the second attorney should make sure that it has, in fact, expired. If the subsequent attorney files a legal malpractice case, unaware that the statute has not expired, he or she -- and not the previous attorney -- will have caused the harm when the statute expires while the matter is under his or her control.

**Out-of-State Travel:** Code of Civil Procedure section 351 provides that a cause of action does not accrue while a defendant is out of the state. In other words, for every day a defendant is absent from the state, the statute of limitations is tolled. There are a few exceptions to this statute. It does not apply, for example, to defendants engaging in interstate commerce, or to licensed California drivers or cars registered in California in automobile accident cases. However even in an automobile case, the statute may be tolled if the plaintiff proves that reasonable efforts to locate a defendant were unsuccessful.

**An Example of Tolling For Out-of-State Travel:** Assume that the underlying basis of a client's legal malpractice case is a physician's medical negligence in August. Many physicians attend conferences, travel, or vacation out of state. For example, if the doctor attends a week-long "medical conference" in Las Vegas in October, spends ten days skiing in Colorado during the winter, and vacations in Hawaii for a week in April, the statute of limitations would expire nearly a month later than it otherwise would have.

**Proving Absence From the State:** In one case, an enterprising investigator was given the assignment of proving the defendant's absence from the state. He telephoned the defendant and announced that he was calling from a game show. Responding to a question, the defendant admitted that she was out-of-state for two weeks during the previous year. [O'Laskey v. Sortino (1990) 224 Cal.App.3d 241.] More traditional forms of fact finding would include inquiry by deposition or by interrogatory, and requests for production of office calendars, airline tickets, hotel bills, and charge-card receipts. In a recent case, I discovered in the defendant-doctor's resume that he had delivered lectures in out-of-state venues.

It has been said that "when your only tool is a hammer, everything looks like a nail." "Hammering out an agreement" at a settlement conference is not the only way to avoid the trap of ongoing contentious litigation. There are many ADR tools for the parties to consider ranging from binding arbitration to mediated litigation management agreements.

**Mediation** is a confidential and private process in which the mediator, who is a trained and experienced professional, guides the disputants in reaching a mutually-acceptable agreement. The mediator identifies issues, looks for areas of agreement, proposes ideas, questions assumptions and helps the parties to resolve their dispute. If agreement is not reached, the parties can proceed with arbitration or litigation. However, statistics show that about 90% of all disputes submitted to mediation with an experienced mediator are resolved to the satisfaction of the parties. The key word is "experienced."



**A Bankruptcy Filing May Toll the Statute:** Assume a situation where an attorney has accepted a legal malpractice case based on the failure of the previous attorney to file a complaint within one year. The attorney keeps the case in his office and files the malpractice case nearly a year later. The attorney later discovers that the defendant in the underlying case had filed for bankruptcy before the original statute of limitations expired, but the petition had been dismissed six months later.

The filing of a petition with the bankruptcy court operated as an automatic stay of the commencement of a judicial action against the debtor, and the statute of limitations was suspended under Code of Civil Procedure section 356. Thus, the period between the filing of the bankruptcy petition and the cessation of the stay was added to the applicable statute of limitations period. Plaintiff's second attorney is now exposed to possible liability because the statute of limitations had not expired when he was consulted by the client. It expired after he had been retained to enforce the plaintiff's rights and incorrectly assumed that the only remedy was a malpractice case.

**Other Possible Jurisdictions May Provide a Forum:** An attorney should ascertain whether the client with the possible legal malpractice case can file his underlying action somewhere else. Many states have statutes of limitation which are longer than in California. The second lawyer who sues the previous lawyer for not filing suit within one year, may later learn, too late, that he could have protected his client's rights by filing the case in another jurisdiction with a longer statute. For example, in *Ferens v. John Deere Co.*, 110 S.Ct 1274 (1990), the plaintiff claimed injury as a result of a defective tractor. The injury occurred in Pennsylvania which had a one-year statute of limitations. However, there was a two-year statute in Mississippi, where the defendant corporation was located. More than one year after the injury, the plaintiff filed his lawsuit in federal court in Mississippi, and then moved to transfer the case to Pennsylvania. The U.S. Supreme Court approved the procedure.

**Partial Payment by Insurance Company:** Insurance Code section 11583 provides that if an insurance company has made partial payment on a personal injury case, without notifying the injured person of the statute of limitations, and the person is not represented by an attorney, the statute is tolled, as to the insured defendant, from the time of the partial payment until the notice is given.

**Incorrect Legal Remedy Or Forum Pursued By Plaintiff's Lawyer:** In *Elkins v. Derby* (1974) 12 Cal.3d 410, an injured man commenced a worker's compensation action which was dismissed by the WCAB more than one year after the injury after finding that plaintiff was not covered as an "employee" and, therefore, not entitled to benefits. When he subsequently filed a Superior Court action to recover for his injuries, defendants asserted that it was barred by the statute of limitation. In finding for the plaintiff, the Supreme Court held that if the defendant is not prejudiced by the delay, the running of the limitations period is tolled when an injured person has several legal remedies and, reasonably and in good faith, pursues one. This applies also to actions filed in federal court but dismissed for lack of jurisdiction. [*Addison v. State* (1978) 21 Cal.3d 313.]



**Equity Based Decisional Rule of Tolling:** "Courts may construe implicit exceptions where purely technical application of procedural rules would result in manifest injustice." [*Elkins v. Derby*, supra.] This principle follows the so-called "equity based decisional rule of tolling." [*Bollinger v. National Fire Ins. Co.* (1944) 29 Cal.2d 399.]

Application of this concept was used in an unusual case where the plaintiff's attorney, who was crossing Civic Center Drive in Santa Ana, on his way to the courthouse to try a case, was hit by a car and seriously injured. While he was incapacitated, the statute of limitations expired. In a decision that explored numerous tolling provisions, the Court of Appeal held that the statute of limitations was tolled, finding statutory authority in Civil Code section 3531, the codification of the maxim of jurisprudence, "The law never requires impossibilities." [*Lewis v. Superior Court* (1985) 175 Cal.App.3d 366.]

**State Bar Takes Over Attorney's Practice:** If a plaintiff has not yet filed suit and was represented by an attorney whose practice was taken over by the State Bar, Code of Civil Procedure section 353.1 extends the applicable statute of limitations by six months from the entry of the order.

**Unconsciousness of Plaintiff:** When a person is "insane," the statute of limitations does not run against him. [Code of Civil Procedure section 352(a).] This also applies to a person who is in a coma or unconscious. In *Feeley v. Southern Pacific Transportation Co.* (1991) 234 Cal.App.3d 649, the plaintiff was in a coma for twelve days after being knocked unconscious while on the defendant's premises. He filed suit one year and one day afterward. The Court of Appeal held that the statute was tolled while he was unconscious.

**Death of the Defendant or Plaintiff:** If a potential plaintiff or defendant dies before the expiration of the statute of limitations, and the cause of action survives, an action may be commenced within one year after the date of death, and the time otherwise limited for the commencement of the action does not apply. [Code of Civil Procedure sections 366.1, 366.2.]

**Action for Damages Against Felon:** Assume that a claimant's husband is killed by a driver who is subsequently convicted of felony drunk driving. Code of Civil Procedure section 340.3 provides that suit may be brought within one year after judgment is pronounced. If judgment is stayed, the tolling stays in effect until the stay is lifted. A stay does not include the time during appeal or probation.

**Injured Employee Does Not File Timely Action But Employer Does:** An injured employee has one year to sue a third-party tortfeasor for his general and special damages. An action by the employer or its insurance carrier for the compensation benefits it paid is governed by the same time limitation. Labor Code section 3853 provides that when an action is brought against a third party by either the employer, the employee may, at any time before trial on the facts, join as party plaintiff, even though more than one year had passed from the date of his injury .

4. Be familiar with the mediation process, and have a negotiation strategy; do not simply show up and expect the mediator to settle the case. Deliver a settlement brief to the mediator to aid the mediator in understanding the issues and dynamics. Begin the mediation with a strong opening statement and have documentary evidence and discovery excerpts to back up every claim or defense.
5. Educate the client about the legal issues involved in the dispute and about the mediation process in general. Understand what is driving your client; find out his or her true interests and needs, as opposed to strident positions. Prepare the client to speak to and be spoken to by the mediator. Discuss your negotiation strategy.
6. If an agreement is reached, be sure to get it in writing and signed by all parties before they leave the room.

#### **CONCLUSION: AVOIDING MALPRACTICE**

What should an attorney do when a client presents a case that appears to be barred by the statute of limitations? Whether the failure to file was due to the client's delay or the negligence of the prior attorney, the procedure is the same. The attorney should determine whether the statute may have been tolled. The attorney who advises a client that the statute of limitations has expired may incur liability if the statute of limitations has been tolled or extended. If the facts cannot be readily ascertained, a lawsuit immediately filed may protect the client's rights. Investigation and discovery can then be undertaken to determine whether the action is really barred by the statute of limitations.

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# Trial Lawyer Resource Center

Posted at 2:30 PM on December 26, 2007 by Ron Miller

## End Runs Around the Statute of Limitations

For plaintiffs' lawyers, the statute of limitations is a habitual pest. As easy as it usually is to avoid, it is the most common basis for legal malpractice actions against personal injury lawyers. A more common pain for most of us is the great case where the statute of limitations has passed before the client calls. Who has not gotten a call from a deserving client with a great case only to find that the statute of limitations has long since passed? While it shocks plaintiffs' lawyers that someone would sit on their rights for so long, it happens all the time. Late Sunday evening as I was getting ready for Christmas with my family, I got an intake call from a woman whose 14 year old son, who died last year, had had cerebral palsy spastic quadriplegia. This is the definition of a catastrophic personal injury case. I wanted to ask her – but didn't – the question that was burning in my mind: why did you wait so long to call?

The statute of limitations is considered harsh and inflexible, even by those enforcing it to the detriment of a deserving plaintiff. But if you get a case where the statute of limitations has seemingly passed, make sure that your case does not fall within one of the four exceptions that most jurisdictions have in some form or other, which can extend the statute of limitations.

The first, and the most litigated, is the discovery rule. Under the discovery rule, an action begins to accrue when the injury victim knew or reasonably should have known of the negligence and the harm that ensued. This exception also has exceptions in many jurisdictions by statutes of repose that often apply in products liability and medical malpractice cases.



The second "end run" around the statute of limitations is the continuation of events theory. This may apply in cases where there is a continuation of services, like a lawyer performing services over time for a client, or when the victim's right depends upon the happening of an event in the future. In these cases, the statute may often be extended beyond the date of a given act of negligence. The third exception is when the culpable party fraudulently conceals knowledge of a cause of action. In this case, in many jurisdictions, the cause of action does not begin to accrue until the reasonable discovery of the fraud.

The final exception, which would have saved the cerebral palsy example above, even if the young man had not died, is when a person is under a disability. A disability is defined as minors (under 18 in most jurisdictions) and plaintiffs who are mentally incompetent. If you think the statute of limitations kills your case, it probably does. But first make sure you turn over the rocks of these exceptions.

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Terri Schubert - *October 22, 2008 3:46 PM*

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# statute of limitations

Dictionary: statute of limitations

*n., pl.,* statutes of limitations.

A statute setting a time limit on legal action in certain cases.

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statute of limitations

Legislative act restricting the time within which legal proceedings may be brought after the occurrence of the events that gave rise to the cause of action. Statutes of limitations protect persons against claims made after evidence has been lost or destroyed. The periods prescribed for different actions in

***For more information on statute of limitations, visit B***

Business Dictionary:

A crime (in the case of a criminal prosecution) or a cause of action accrued when the event beginning its time limitation occurs. The statute of limitations for the subject of the suit or prosecution (such as a crime or personal injury) begins when the *discovery* of a condition one wishes to redress, such as in the case of controversial "repressed memory" cases where the sexual abuse long afterwards.

An idea closely related, but not identical, to the statute of limitations is the statute of repose. The statute of repose limits the time within which an action may be brought. The injury need not have occurred, much less have caused any damage. The statute of repose begins running upon accrual of the claim, begins when a specific event occurs, regardless of whether injury has resulted. This often applies to buildings and property. An example of this would be that if a person is electrocuted by a power line, say, in 1990, a state law may allow his heirs to sue only before or before 2000 in the case of a hidden defect. Statutes of repose are often used by manufacturers to contend they are necessary to avoid unfairness to property. Consumer groups argue that statutes of repose encourage manufacturers to build durable products and to notify consumers of defects before they become aware of them. Consumer groups also argue that statutes of repose are poorer people, since they are more likely to own older goods.

## Expiration

Once the time allowed for a case by a statute of limitations expires, that defense is accepted, any further litigation is foreclosed. The statute of limitations is tolled under certain circumstances. Tolling will prevent the statute of limitations from running if the condition exists. Examples of such circumstances are if the plaintiff has filed a bankruptcy proceeding. In those instances, the statute of limitations is tolled until the circumstance (*i.e.*, the injured party's bankruptcy proceeding is concluded in the latter) no longer exists.





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## California Statute of Limitations for Civil and Personal Injury Actions - An Overview

By [Aaron Larson](#)  
[Law Offices of Aaron Larson](#)  
 July, 2004

**Important Notice:** The following overview of California's "statute of limitations" laws is presented on an as-is basis. This information is believed accurate as of the date of authorship, but is not intended to provide a complete analysis of statutory limitations on the right to sue and may not reflect subsequent changes in the law. For a full review of California's "statute of limitations" law, or for a determination of how the law applies to a specific incident or injury, please consult a qualified attorney licensed to practice in the state of California.

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- [Accrual of Claims](#)
- [The Discovery Rule](#)
- [Tolling of the Statute of Limitations](#)
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**What Is A "Statute of Limitations"**

A statute of limitations is a law which places a time limit on pursuing a legal remedy in relation to wrongful conduct. After the expiration of the statutory period, unless a legal exception applies, the injured person loses the right to file a lawsuit seeking money damages or other relief.

**Proliferation of Statutes**

Although people often speak of "the statute of limitations", in fact there are many statutes which apply limitations periods to civil actions. Sometimes it can be difficult to keep track of the various statutes and their exceptions. Thus it is a very good idea for somebody who is concerned about losing their right to sue as a result of the expiration of the statutory limitations period to consult with a qualified lawyer, who can help determine which statute applies, and help preserve the right to recover damages.

### **Accrual of Claims**

A statute of limitations is said to start running at the time a claim accrues. Ordinarily, that is the time at which an injury is suffered.

### **The Discovery Rule**

Sometimes it is not reasonably possible for a person to discover the cause of an injury, or even to know that an injury has occurred, until considerably after the act which causes the injury. For example, an error in the drafting of a will might not be noticed until the will is being executed, decades after it was drafted, or a financial planner's embezzlement might not be noticed for years due to the issuance of false statements of account.

When it applies, the "discovery rule" permits a suit to be filed within a certain period of time after the injury is discovered, or reasonably should have been discovered. The discovery rule does not apply to all civil injuries, and sometimes the period of time for bringing a claim post-discovery can be short, so it is important to seek legal assistance quickly in the event of the late discovery of an injury.

### **Tolling of the Statute of Limitations**

In addition to late discovery, it may be possible to avoid the harsh result of a statute of limitation by arguing that the statute has been "tolled". When it is said that a statute is "tolled", it means that something has stopped the statute from running for a period of time. Typical reasons for tolling a statute of limitations include minority (the victim of the injury was a minor at the time the injury occurred), mental incompetence (the victim of the injury was not mentally competent at the time the injury occurred), and the defendant's bankruptcy (the "automatic stay" in bankruptcy ordinarily tolls the statute of limitations until such time as the bankruptcy is resolved or the stay is lifted).

Under California law, except in cases of medical malpractice, a minor has two years from the date of his or her 18th birthday to file a tort claim. For medical malpractice actions involving minors below the age of six, the action must be filed within three years of the date of the injury or before the minor's eighth birthday, whichever period is greater.

### **Contractual Limitations**

It is often possible to shorten a statutory limitations period by contract. For example, an employment contract might require that any claim relating to the employment relationship, including wrongful termination, be filed within one year of the claimed wrongful conduct. Courts often uphold these clauses, particularly in the context of business transactions, even though they provide for a shorter limitations period than the statute of limitations would otherwise apply.