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14 Attorneys for Defendant CESAR L. SINNACO, M.D.

15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA  
 17 OAKLAND DIVISION

18 **WASHINGTON C. MONTANO,**

19 Plaintiff,

20 v.

21 **CESAR L. SINNACO, M.D.,**

22 Defendant.

No. 5:04-cv-00543-CW

**STIPULATED WAIVER OF JURY  
 TRIAL AND PLAINTIFF'S RIGHT  
 TO AWARD OF ATTORNEYS' FEES**

Judge: Hon. Claudia Wilken

1 By and through this Stipulation, Plaintiff Washington C. Montano and Defendant Cesar  
2 L. Sinnaco (together "the Parties") through their counsel of record, pursuant to Federal Rules of  
3 Civil Procedure 38(d) and 39(a)(1) and Local Rule 7-12 stipulate to waive their respective rights  
4 to a jury trial and agree to a nonjury trial, and stipulate that Plaintiff, should the parties proceed  
5 to a bench trial and should Plaintiff prevail on his claims, waives any award of attorneys' fees.

6 WHEREAS Defendant demanded a jury trial in his Answer (filed November 23, 2005)  
7 and affirmed that demand in subsequent Joint Case Management Statements;

8 WHEREAS Plaintiff would prefer to proceed as a bench trial;

9 WHEREAS if Plaintiff prevails on his claims, he will be entitled to an award of  
10 attorneys' fees under 42 U.S.C. section 1988 and the Guidelines for the Federal Pro Bono Project  
11 paragraph 12;

12 NOW, THEREFORE, the Parties stipulate that:

13 (a) Defendant withdraws his demand for a jury trial, and both parties stipulate to a  
14 nonjury trial, under Federal Rules of Civil Procedure 38(d) and 39(a)(1); and

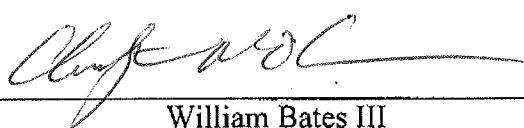
15 (b) in consideration of Defendant's withdrawal of his demand for a jury trial and  
16 contingent on the parties proceeding to a bench trial, Plaintiff waives his right to any award of  
17 attorneys' fees under 42 U.S.C. section 1988, the Guidelines for the Federal Pro Bono Project  
18 paragraph 12, and any other applicable statute, regulation, or rule.

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1 In waiving Plaintiff's right to any award of attorneys' fees, neither Plaintiff nor Plaintiff's  
2 counsel, Bingham McCutchen LLP, waives any and all rights they have to seek reimbursement  
3 for Bingham McCutchen's out of pocket costs for the litigation of this case from the Court under  
4 the Guidelines for the Federal Pro Bono Project paragraph 11 and, if appropriate, reimbursement  
5 for deposition expenses from the State of California's Transcript Reimbursement Fund,  
6 California Business & Professions Code sections 8808 *et seq.*

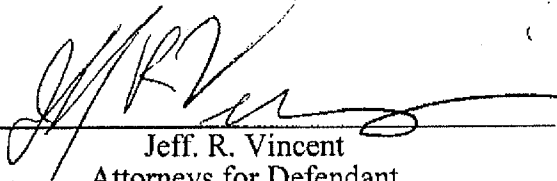
7  
8 DATED: November 29, 2011

BINGHAM MCCUTCHEN LLP

9  
10 By: 


11 William Bates III  
12 Christopher M. O'Connor  
13 Attorneys for Plaintiff  
14 ATTORNEY GENERAL OF CALIFORNIA

15  
16  
17 DATED: November 29, 2011

18 By:   
19 Jeff. R. Vincent  
20 Attorneys for Defendant

21 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

22 DATED: December 2, 2011

23 By:   
24 Hon. Claudia Wilken  
25 United States District Judge