

AFFIDAVIT OF ROLAND C. COLTON

I, Roland C. Colton, declare as follows:

1. I am the defendant named in the within indictment. I have personal knowledge of the facts set forth in this declaration and, if called and sworn as a witness, I would be competent to testify to such facts.

2. I have been an attorney licensed to practice law in the State of California since June 28, 1978. I operated as a sole practitioner for many years before forming the law partnership of Colton & Roesser in 1991. My practice was based in San Diego County until 2005, when I moved my offices to Orange County. I married my present wife, Dr. Nahid Birjandi ("Dr. Birjandi"), on June 18, 1999, and have resided with her since that time in her Laguna Niguel residence.

3. On October 11, 2001, I filed Chapter 7 bankruptcy in the Southern District of California. The Trustee appointed to the case was Richard Kipperman ("Trustee"), represented by the law firm of Pyle, Sims, Duncan & Stevenson.

4. On December 11, 2001, the Trustee's counsel sent me a letter demanding that the law firm of Colton & Roesser be dissolved, that all assets of the partnership be sold, and that any surplus be paid over to the Trustee. In December, 2001, the Trustee's counsel also sent me a letter seeking to terminate the lease where the law firm was conducting business in Del Mar, California.

5. The first session of my Rule 2004 bankruptcy examination took place one month later, on January 15, 2002. During this examination, I answered questions about my finances, my wife's finances, and financial payments that I had made to my wife to assist her in making mortgage payments on her residence. During the deposition, the Trustee's attorney, Peter Duncan, indicated to me and my counsel, "off the record", that the Trustee might take legal action against my wife, in view of testimony that I had provided her financial assistance. I then advised Mr. Duncan that I had not notified my wife of my bankruptcy, and requested that I be given notice before any legal action was

1 taken against my wife so that I could discuss it with her first to minimize the shock and
2 embarrassment to her and her family and the potential disruption to my marriage that was
3 likely to result; Mr. Duncan gave his word to me and my attorney that he would do so.

4 6. Shortly thereafter, on January 30, 2002, *without any advance notice*, the
5 Trustee filed a lawsuit against my wife, Dr. Birjandi, seeking to force the sale of her
6 residence and pay over the proceeds to the Trustee. *A lis pendens* was also recorded
7 simultaneously against my wife's Orange County residence. The lawsuit also sought to
8 force the turnover of Dr. Birjandi's podiatric practice, a practice to which, as I had
9 testified, I had never given any financial support. The lawsuit and *lis pendens* were
10 served on my wife's parents (temporary guests at the residence), who then shared the
11 documents with my wife. She was in hysterics when she confronted me with the legal
12 action. To add to the stress, my wife and I had discovered only days earlier that she was
13 pregnant with our first child.

14 7. Mr. Duncan later tried to justify his action by explaining that my wife had
15 dual citizenship and might flee the jurisdiction. Mr. Duncan's actions resulted in a
16 complete breakdown of trust between myself and the Trustee, greatly escalating the
17 acrimonious litigation between the parties. His unethical behavior continued as he
18 violated bankruptcy rules and protective orders entered into in my case.

19 8. As hostilities increased, counsel for the Trustee threatened to file lawsuits
20 against my adult children – Jessica (age 26), Kimberly (age 24), Michael (age 21) and
21 Christopher (age 19) – for whom I had provided post-high school financial assistance
22 with respect to tuition, housing and support payments during prior years. At the same
23 time, the Trustee also threatened litigation against my law partner and law firm.

24 9. Faced with staggering legal fees in defending the bankruptcy litigation and
25 adversary proceedings, along with the prospects of future legal action against my
26 children, my law partner and law firm, my attorney suggested moving for dismissal of the
27 bankruptcy petition. It was clear that I would never be able to obtain the fresh start that I
28 had sought, and that the personal and financial cost of litigating multi-front actions with

1 the Trustee had become extremely burdensome, threatening my marriage, my children,
2 and my business relationships.

3 10. In the midst of mounting litigation, my attorney approached the Trustee
4 about stipulating to a dismissal of my bankruptcy petition, wherein I would receive no
5 discharge of my debts. The Trustee responded in writing, on May 21, 2002, stating that
6 if I paid a \$500,000 penalty and stipulated to a denial of discharge, that the Trustee would
7 agree to the stipulation. I rejected the offer.

8 11. Rebuffed by my rejection of the penalty payment, the Trustee raised the
9 stakes even higher. On June 14, 2002, making good on his threat, the Trustee filed an
10 adversary action against my law partner and my law firm, attempting to force the law
11 firm's dissolution and to recover from my partner one-half of all draws that had been paid
12 to me since the filing of the petition, and seeking a termination of the partnership's lease.

13 12. On July 1, 2002, I filed a motion to dismiss his bankruptcy petition.
14 Although the Trustee previously had been willing to stipulate to a dismissal (upon
15 payment of a substantial penalty), the Trustee now vigorously opposed the motion, and
16 the motion was denied. The Trustee then went into full throttle against me and other
17 parties in the various adversary proceedings.

18 13. During the pendency of the bankruptcy, with the assistance of counsel, I
19 was preparing amendments to my bankruptcy schedules to address any potential
20 omissions and inaccuracies contained therein. The process of completing the
21 amendments was frequently diverted due to the constant barrage of motions, subpoenas
22 and other discovery matters coming from the Trustee that had to be responded to. In
23 addition, my time was further compromised by the birth of my daughter on October 10,
24 2002. But for the onset of settlement discussions less than two weeks later, the
25 amendments would have been completed, and would have addressed the allegations
26 contained within the September 30, 2002 motion discussed below.

27 14. On September 30, 2002, the Trustee filed an *ex parte* motion for a
28 temporary injunction (without notice), alleging that I had concealed assets and business

1 interests (including certain property located in France). At the unopposed *ex parte*
2 hearing on October 15, 2002, the court granted the TRO. On October 17, 2002, my
3 attorney and I were served with a copy of the motion and TRO, indicating a preliminary
4 injunction hearing set for October 25, 2002—just eight days later.

5 15. On October 22, 2002, my attorney advised me that he had been told by
6 counsel for the Trustee, Susan Stevenson, that I “had better settle the case quickly if I
7 wanted to avoid future criminal action.” I perceived the comment to be borderline
8 extortion and asked Mr. Curry to note the conversation in my file. I took very seriously
9 the implications of having to defend not only the multi-front civil litigation, but also
10 criminal proceedings in the future.

11 16. Mr. Curry advised me that it would be in my best interests to settle the case
12 quickly in order to avoid criminal action. As a result, settlement discussions ensued
13 rapidly. During the course of the discussions, Mr. Curry made efforts to move the
14 discussions along as quickly as possible, at times telling me that I might be sacrificing
15 certain benefits by doing so. For example, he believed that we could have negotiated a
16 lower financial obligation with the Trustee, given some additional time. Foremost in my
17 mind was that we meet the Trustee’s demand of reaching a prompt settlement before
18 criminal action was commenced.

19 17. Forsaking the prior \$500,000 penalty offer, the Trustee felt he had leverage
20 to ask for much more than before. Over the course of the next few days, I ultimately
21 committed to paying the Trustee a penalty of up to \$1,150,000,¹ plus agreed to pay an
22 additional \$1,000,000 penalty in the event that I defaulted on the settlement agreement.
23 The Trustee also insisted that I not receive a discharge as part of the settlement. Under no
24 circumstances would I have agreed to such excessive financial penalty and forfeited my
25 right to a discharge of debts, if I had not understood that the settlement wrapped up all
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28 ¹ I call the \$1,150,000 figure a penalty because only a small fraction of the money would be
used to pay creditors. The lion’s share of the money was to be paid to the Trustee, his attorneys and
experts, thus resulting in a minimal pay-down of debt with no discharge of bankruptcy.

1 aspects of my case, including any potential criminal action.

2 18. In negotiating and drafting the settlement agreements, Mr. Curry advised
3 me on several occasions that he was taking care to include language as strong as possible
4 to make it clear that the settlement would encompass any potential criminal action as
5 well.

6 19. Mr. Curry also told me that, since the threat of criminal action was gone
7 with the settlement, there would be no need to file any opposition or reply papers to the
8 Motion. He further indicated to me that there would be no need to complete the
9 amendments to my bankruptcy schedules.

10 20. I also had discussions with my wife about moving quickly on the
11 settlement. With our newborn child less than two weeks old, I reluctantly shared with my
12 wife the veiled threat of criminal action if I did not act quickly to settle the case. My wife
13 was horrified about this possibility and told me that I needed to do whatever it took to
14 resolve the bankruptcy case immediately.

15 21. My wife told me that if we were assured that there would be no criminal
16 action taken against me that she would assist me financially with the settlement. As a
17 result, she agreed to refinance her residence and allowed approximately \$280,000 of the
18 refinance funds to be used to pay the Trustee in connection with my settlement.

19 22. Despite that the settlement involved a huge financial toll for my family, my
20 wife and I attempted to put the past behind us and get on with our lives. Convinced that
21 there would not be a criminal action, we decided to have another child. A second
22 daughter was born to us on March 8, 2005. Neither my wife nor I would have considered
23 bringing another child into the world if we had believed that I would be facing an
24 indictment with a risk of years of imprisonment. I was particularly sensitive to the
25 anxiety and panic attacks that my wife had experienced during the pendency of the
26 adversary proceeding against her in 2002. Words cannot describe the incalculable dread
27 and shock that we both experienced when we learned of the pending indictment on
28 November 8, 2005, when Special Agent John Hause approached me at my home and

1 advised me that I was a target of a federal grand jury criminal proceedings.

2 23. I was counsel-of-record in the civil case of *Insurance Ventures, Inc. v.*
3 *Vesta Fire Ins. Co. et al.*, Sacramento Superior Court Case No. 04AS00268, which was
4 filed in January of 2004. Insurance Ventures was seeking to recover \$30,000,000 in
5 damages from the Vesta Fire Insurance Company ("Vesta"). Shortly after Insurance
6 Ventures filed its lawsuit, Vesta filed a retaliatory action against Insurance Ventures, all
7 of its officers and attorneys (including myself), in federal court in Sacramento (Case No.
8 S-04-0296 FCD PAN.) Vesta was represented in both cases by John (Jack) Pierce of
9 Barger & Wolen. Both cases were aggressively litigated, and my deposition was taken in
10 the federal court action in September of 2005 by Jack Pierce.

11 24. During the course of my civil deposition, Mr. Pierce went to great lengths
12 examining me on my bankruptcy schedules, including an intensive examination about
13 ownership of property in France, my wife's purchase of her residence, the major areas of
14 focus of the criminal investigation. At that time, I had no knowledge that there was any
15 criminal investigation, nor was I aware of any possible future indictment. In fact, I took
16 comfort in the fact that any potential criminal exposure on the bankruptcy case was long
17 since past.

18 25. If I had known that there was an ongoing criminal investigation, I would
19 have had the opportunity to discuss with counsel the merits of invoking the Fifth
20 Amendment against self-incrimination during the deposition. I had no reason to believe,
21 at that late date (especially with the promise of the Trustee's counsel not to pursue
22 criminal action) that there was any possibility of a criminal investigation, and therefore
23 did not consider invoking the privilege.

24 26. During the course of reviewing discovery from the government, I
25 subsequently learned that Mr. Pierce had been in contact with the government and was
26 aware of the criminal investigation months before I was, and prior to my civil deposition
27 in the *Insurance Ventures* case.

28 27. During the course of reviewing discovery from the government, I also

1 learned that the criminal investigation commenced in the summer of 2002, while my
2 bankruptcy case was pending, something that I was not aware of before. I further
3 observed, in looking through the discovery, that there was no action taken in the criminal
4 investigation following the "global settlement" until I had made all but the final payment
5 on my settlement.

6 28. The shame and humiliation that has accompanied the indictment is
7 incalculable. If a person types in my name under "Google", the indictment is front and
8 center, along with the next several references as well. Maintaining a law practice with the
9 indictment hanging over my head has been extremely difficult. Phone interviews with
10 potential clients, who have expressed a strong interest in retaining my services, often
11 don't call back. If a meeting does ensue, I then feel compelled to disclose the indictment
12 and potential impact on my ability to perform legal services which, understandably, often
13 leads to a loss of the business.

14 29. Because people are so quick to check you out these days, I am very leery
15 about giving out my full name or profession in making new acquaintances, such as
16 meeting parents of my daughters' friends at school activities or birthday parties.

17 30. My wife comes from a very proud family. Her father is a prominent
18 businessman in Iran who frequently visits the U.S. along with his wife. Many of my
19 wife's relatives reside in Orange County. My wife prefers that news of my indictment not
20 be publicized among her family. As a result, she lives in fear that family members will
21 check us out on the internet, and that they will discover the indictment, leading to further
22 shame and embarrassment.

23 I declare under penalty of perjury that the foregoing is true and correct and that this
24 declaration was executed on the 8th day of January, 2008 at Laguna Niguel,
25 California.

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28 Roland C. Colton