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1 THE STATE BAR OF CALIFORNIA
2 OFFICE OF THE CHIEF TRIAL COUNSEL
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PUBLIC MATTER

THE STATE BAR COURT

ALTERNATIVE DISCIPLINE PROGRAM - LOS ANGELES

11 In the Matter of)	Case Nos. 04-O-11783-RAP, et al.
)	
12 MARC A. GOLDBACH,)	PARTIES' ADDENDUM TO
13 No. 139318)	STIPULATION RE: FACTS AND
)	CONCLUSIONS OF LAW,
14 A Member of the State Bar)	re: INVESTIGATION no.
)	06-O-12760
)	
)	

15 The State Bar of California, Office of Chief Trial Counsel, through Deputy Trial
16 Counsel Brooke A. Schafer, and Respondent, Marc A. Goldbach, appearing with counsel
17 Arthur Margolis, submit this Addendum to the Stipulation re: Facts and Conclusions of
18 Law previously lodged on July 31, 2006. This Addendum relates solely to a new
19 investigation – cause no. 06-O-12760. The misconduct in the investigation matter is
20 explained in the attachment hereto covering facts and conclusions of law.

21 **I. INCORPORATION OF PRIOR STIPULATION**

22 This addendum is intended to supplement the Stipulation re: Facts and
23 Conclusions of Law in case nos. 04-O-11783-RAP et al., which the parties lodged with
24 the Court on July 31, 2006 (the "Prior Stipulation"). The Prior Stipulation is also
25 incorporated as if fully set forth herein. Attached hereto is the parties' addendum to
26 stipulation re: facts and conclusions of law concerning new investigation matter no.
27 06-O-12760.



1 II. ALL OTHER DISCIPLINE CONDITIONS REMAIN THE SAME

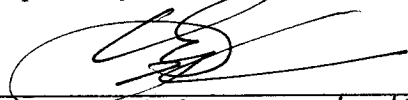
2 The misconduct at issue herein – one NSF check charge – is similar to some of the
3 misconduct in the Prior Stipulation. The inclusion of the instant case in the Prior
4 Stipulation would not have increased the State Bar’s discipline recommendation and,
5 based on discussions with the Court, would not have increased the discipline it
6 recommends. It is the parties’ request therefore that the conditions attached to the matters
7 already submitted to the Court, including matters of discipline and program conditions,
8 shall remain the same. Respondent understands that all the conditions contained in the
9 Confidential Statement of Alternative Dispositions and Orders, and the Contract and
10 Waiver for Participation in the State Bar Court’s Alternative Discipline Program shall
11 apply to the instant misconduct to the same extent they apply to the misconduct described
12 in the Prior Stipulation.

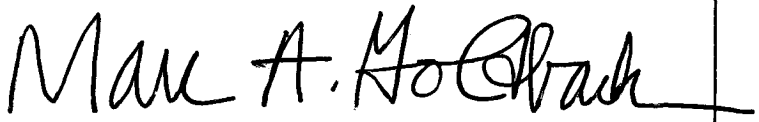
13
14 September 11, 2007
October _____, 2006

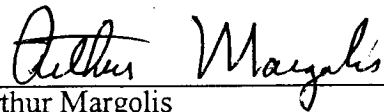
17 September 6, 2007
18 October _____, 2006

20 September 9, 2007
21 October _____, 2006

Respectfully submitted,


~~Brooke A. Schafer~~, ERIC H. HSU
Deputy Trial Counsel
Office of Chief Trial Counsel


Marc A. Goldbach
Respondent


Arthur Margolis
Respondent’s Counsel

ADDENDUM TO STIPULATED FACTS and CONCLUSIONS OF LAW
STATE BAR ALTERNATIVE DISCIPLINE PROGRAM

IN THE MATTER OF: MARC A. GOLDBACH, bar no. 139318

INV. NUMBER: 06-O-12760 (inv.)

I. STIPULATED FACTS AND CONCLUSIONS OF LAW

Prior Stipulation Incorporated Herein

This addendum is intended to supplement the Stipulation re: Facts and Conclusions of Law in case nos. 04-O-11783 et al., which the parties lodged with the Alternative Discipline Program ("ADP") Court on July 31, 2006 (the "Prior Stipulation"). The Prior Stipulation is also incorporated as if fully set forth herein.

New Investigation no. 06-O-12760 (NSF Check)

1. On December 13, 2005, Respondent wrote check no. 1454, made payable to himself for attorney fees, in the amount of \$296.00. Check no. 1454 was written out of his Client Trust Account maintained at Washington Mutual Bank ("CTA"). That same day, check no. 1454 was presented for payment to the bank.

2. At the time check no. 1454 was presented for payment on December 13, 2005, Respondent's CTA had a negative balance of -\$690.00.

3. Respondent had actual knowledge of Washington Mutual Bank, and how the CTA was handled at that bank with regard to clearing checks, due to problems with his CTA in June 2004, and May 2005. Thus, when he wrote check no. 1454 he knew or should have known there was an insufficient balance in his CTA to cover the check.

4. Washington Mutual Bank, acting pursuant to their legal duties under California law, notified the State Bar of California on December 21, 2005, of the returned check no. 1454 due to insufficient CTA funds. The State Bar thereafter opened an investigation.

Conclusions of law

– By issuing check no. 1454 drawn on his CTA when he knew there were insufficient funds in the account, Respondent committed an act involving moral turpitude, in wilful violation of Business and Professions Code section 6106.

II. RULE 133 NOTICE OF PENDING PROCEEDINGS

Respondent was notified in writing of any pending investigations not included in this stipulation, pursuant to Rule 133(12), on SEPTEMBER 6, 2007.

III. POTENTIAL INCREASE IN DISCIPLINE

Respondent understands that the matters in this addendum, being additional misconduct, may result in the Office of Chief Trial Counsel seeking, or the State Bar Court recommending, among other things: additional discipline in the underlying cases, additional ADP conditions and/or extending the length of his participation period in the court's Alternative Discipline Program.

IV. OPPORTUNITY TO SEEK COUNSEL

Respondent acknowledges that he has had full opportunity to read and understand this agreement, and to seek counsel if necessary, prior to signing.

//// end of attachment ////

1 **DECLARATION OF SERVICE BY REGULAR MAIL**

2 **CASE NUMBER(s): 04-O-11783-RAP; et al.**

3
4 I, the undersigned, over the age of eighteen (18) years, whose business address and
5 place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles,
6 California 90015, declare that I am not a party to the within action; that I am readily familiar
7 with the State Bar of California's practice for collection and processing of correspondence for
8 mailing with the United States Postal Service; that in the ordinary course of the State Bar of
9 California's practice, correspondence collected and processed by the State Bar of California
10 would be deposited with the United States Postal Service that same day; that I am aware that
11 on motion of party served, service is presumed invalid if postal cancellation date or postage
12 meter date on the envelope or package is more than one day after date of deposit for mailing
13 contained in the affidavit; and that in accordance with the practice of the State Bar of
14 California for collection and processing of mail, I deposited or placed for collection and
15 mailing in the City and County of Los Angeles, on the date shown below, a true copy of the
16 within

17 **PARTIES' ADDENDUM TO STIPULATION RE FACTS AND**
18 **CONCLUSIONS OF LAW RE: INVESTIGATION NO. 06-O-12760**

19 in a sealed envelope placed for collection and mailing at Los Angeles, on the date shown
20 below, addressed to:

By United States Mail	Courtesy Copy
ARTHUR L. MARGOLIS MARGOLIS & MARGOLIS LLP 2000 RIVERSIDE DRIVE LOS ANGELES, CALIFORNIA 90039	

21 in an inter-office mail facility regularly maintained by the State Bar of California addressed
22 to:

23 **N/A**

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

26 **DATED: September 11, 2007**

27 **SIGNED:** 
BERNARD PIMENTEL
28 **Declarant**

**ORIGINAL
CONFIDENTIAL**

(Do not write above this line.)

State Bar Court of California Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES		
Counsel for the State Bar BROOKE A. SCHAFER Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 (213) 765-1051 Bar # 194824	Case Number(s) 04-O-11783-RAP; 04-O-13755; 05-O-03037	(for Court use) <div style="text-align: center; font-size: 24pt; font-weight: bold;">LODGED</div> <div style="text-align: center; font-size: 18pt; font-weight: bold;">OCT 23 2006</div> <div style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per ARTHUR L. MARGOLIS MARGOLIS & MARGOLIS 2000 Riverside Drive Los Angeles, California 90039 Telephone: (310) 772-2207 Bar # 57703	<div style="font-size: 24pt; font-weight: bold;">FILED</div> <div style="font-size: 18pt; font-weight: bold;">DEC 18 2005</div> <div style="font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>	
In the Matter of MARC AARON GOLDBACH Bar # 139318 A Member of the State Bar of California (Respondent)	Submitted to Program Judge <div style="text-align: center; font-weight: bold;">STIPULATION RE FACTS AND CONCLUSIONS OF LAW</div> <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted January 30, 1989
(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation Proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consists of _____ pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law."

(Do not write above this line.)

- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§ 6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior Record of Discipline [see standard 1.2(f)]**
- (a) State Bar Court Case # of prior case _____
- (b) Date prior discipline effective _____
- (c) Rules of Professional Conduct/State Bar Action violations _____
- (d) Degree of prior discipline _____
- (e) If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline" (above)
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances are involved.**

Additional aggravating circumstances:

1 3. On August 18, 2003, following the death of Viola Tebaldi, Paul E. Nord, attorney for Mr.
2 Lagorio, sent a letter of representation to Respondent. In the letter, Mr. Nord requested detailed
3 information concerning the proceeds of a recent sale of Viola Tebaldi's residence in Walnut Grove,
4 California (the "Walnut Grove Property"). At the time, Respondent had already received from the
5 Tebaldis two checks, which together constituted the proceeds from the sale of the Walnut Grove
6 Property: check number 95, in the amount of \$99,652.48, and check number 93, in the amount of
7 \$75,545.00. The latter, check number 93, constituted the Tebaldi's claim on sale proceeds for caring for
8 Viola Tebaldi during her lifetime.

9 4. On August 21, 2003, Mr. Nord requested that Respondent forward the money from the
10 Walnut Grove Property to his client Mr. Lagorio, the administrator of the estate. At the time, Mr. Nord
11 was unaware of the second check (check no. 93). That day, Respondent deposited check number 93, in
12 the amount of \$75,545.00, into his client trust account he maintained at Washington Mutual Bank
13 (hereinafter "CTA").

14 5. Thereafter, between September 15, 2003 and July 7, 2004, the balance in Respondent's
15 CTA repeatedly fell below \$75,545.00. Specifically, the balance dipped below \$75,545.00 on the
16 following dates:

DATE	BALANCE
10/06/03	\$39,833.41
11/06/03	\$36,461.82
12/04/03	\$27,522.04
01/07/04	\$20,041.91
02/05/04	\$17,558.12
03/04/04	\$20,161.03
04/06/04	\$12,311.29
05/06/04	\$3,241.97
06/04/04	\$241.07
07/07/04	\$569.11

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27 During this period there were no payments on his clients' behalf or instruction; therefore, he was
28 required to maintain the entire amount of \$75,545.00 in the CTA. Moreover, during this period

1 Respondent was suffering financial difficulties in his law practice. Among other things, for financial
2 reasons, he moved his law practice into his home, and defaulted on a Small Business Administration
3 loan.

4 6. On August 23, 2003, Respondent sent an e-mail message to Mr. Nord, demanding that
5 Mr. Lagorio provide a bond pursuant to a provision of the Tebaldi Family Trust before Respondent
6 would turn over any of the trust assets. On August 26, 2003, Mr. Nord sent Respondent a copy of the
7 Fiduciary Bond issued to Mr. Lagorio, in accordance with the terms of the Trust. That day, August 26,
8 2003, Respondent sent check number 93 for \$75,545.00. Respondent told Mr. Nord that check number
9 93 represented the balance of the proceeds from the sale of the Walnut Grove Property which
10 Respondent had been directed to hold in trust until resolution of the Tebaldi's claim for reimbursement.

11 7. On September 3, 2003, Mr. Nord notified Respondent that Mr. Lagorio had filed a
12 petition to be appointed as Administrator for the Estate of Viola Tebaldi. In addition, Mr. Nord returned
13 check number 95, for \$99,652.48, and requested Respondent to replace it with a check in that amount
14 payable to Mr. Lagorio. Mr. Nord further asked that the \$75,545.00 held in Respondent's CTA be sent
15 to him in a check payable to Mr. Lagorio. Respondent did not respond to either request in a reasonable
16 time.

17 8. On October 7, 2003, Respondent sent a letter to Mr. Nord enclosing two replacement
18 checks payable to Mr. Lagorio, check number 98, in the amount of \$99,652.48 (meant to replace check
19 no. 95), and check number 97, in the amount of \$3,052.11 (instead of the over-\$75,000.00 balance
20 requested by Mr. Lagorio). Respondent failed to return the \$75,545.00 despite the fact that Mr. Lagorio
21 had been appointed the Administrator of the Viola Tebaldi Estate, and was responsible for distributing
22 the assets of the estate. On October 9, 2003, Mr. Nord repeated his request that the full \$75,545.00
23 being withheld from the sale proceeds be disbursed to Mr. Lagorio.

24 9. On October 20, 2003, Respondent indicated that he was waiting to hear from his clients
25 to respond to Mr. Nord's demand for the \$75,545.00, which Respondent represented was "*held in [his]*
26 *trust account.*" As of October 7, 2003, however, the balance in Respondent's CTA had dipped to only
27 \$36,461.82. At the time he made this representation to Nord, Respondent knew he was not holding the
28 entire amount in his CTA.

1 10. On October 21, 2003, Mr. Nord filed a Petition to Establish Estate's Claim of Ownership
2 of Property, seeking an order requiring the turnover of the \$75,545.00 and other estate funds diverted to
3 the Tebaldis. In his response to that Petition, Respondent represented that ***"\$75,545 of the proceeds of***
4 ***the sale is currently being held by Marc. A. Goldbach, Attorney for Michael Tebaldi and Rowena***
5 ***Tebaldi."*** By November 7, 2003, however, the balance in Respondent's CTA had dipped to \$27,522.04.
6 At the time he filed his response with the court, Respondent knew this representation was false.

7 11. On December 3, 2003, the court entered a judgment Establishing Estate's Claim of
8 Ownership of Property, specifically directing Rowena Tebaldi to transfer all her interest in the proceeds
9 of the sale of the Walnut Grove Property to Mr. Lagorio, including the \$4,400.00 paid to her from the
10 escrow proceeds and the \$75,545.00 she transferred to Respondent. In addition, the Tebaldis were held
11 jointly and severally liable for twice the value of the property they improperly diverted from the estate,
12 and were ordered to pay Mr. Lagorio a total of \$159,890.00. Among other things, the court ordered:

13 **"Marc A. Goldbach, Esq. is directed to transfer**
14 **\$75,545, transferred to his Trust Account by Rowena**
15 **Tebaldi, to Victor A. Lagorio, Jr., as Administrator**
16 **With Will Annexed of the Estate of Viola Tebaldi."**

17 12. On December 13, 2003, Respondent requested that Mr. Lagorio waive any amount above
18 \$79,945.00. Mr. Lagorio denied this request.

19 13. By late December, the remaining money still had not been turned over to Mr. Lagorio.
20 On December 24, 2003, Mr. Nord reminded Respondent that the judgment directed him personally to
21 transfer \$75,545.00.

22 14. On December 29, 2003, Respondent filed a motion for reconsideration of the judgment.
23 In the motion, Respondent represented to the court that:

24 ***"Claimants and their attorney continue to hold the***
25 ***\$75,545.00 of the sale proceeds in trust pending further***
26 ***administration of the Estate."***

27 However, by December 4, 2003, the balance in Respondent's CTA had already dipped to only
28 \$27,522.04, and by January 7, 2004, the balance fell to \$20,041.91. At the time he filed the motion for
reconsideration on December 29, 2003, Respondent knew his statement was false.

1 15. On March 8 and 9, 2004, Mr. Nord requested confirmation that the \$75,545.00
2 transferred to Respondent's CTA remained intact. On March 9, 2004, Respondent sent a one word
3 response to Mr. Nord stating: "Yes," confirming that the \$75,545.00 remained in his CTA. However,
4 by March 4, 2004, the balance in Respondent's CTA had dipped to \$20,161.03. At the time he
5 confirmed Mr. Nord's inquiry on March 9, 2004, Respondent knew his reply was false.

6 16. During the period March 2004 through June 2004, Mr. Nord continued to request transfer
7 of the \$75,545.00 on many occasions.

8 17. After completing an initial treatment program for substance abuse in the Spring of 2004,
9 Respondent began efforts to refinance his house to raise the money necessary to pay Nord.

10 18. On June 21, 2004, a check for \$75,580.00 was finally delivered to Mr. Nord. It was paid
11 through an escrow company as Respondent used proceeds from his own home refinance to make up the
12 difference in his depleted CTA, as by June 2004, there was only slightly more than \$200.00 in
13 Respondent's CTA.

14 **Conclusions of Law - Case No. 04-O-11783**

15 – By failing to maintain at least \$75,545.00 in his CTA between September 2003 and July 2004,
16 Respondent failed to maintain client funds in a trust account in wilful violation of Rule of Professional
17 Conduct 4-100(A).

18 – By misappropriating approximately \$75,300.00 belonging to another, Respondent wilfully
19 committed acts involving moral turpitude and corruption in violation of Business and Professions Code,
20 Section 6106.

21 – By failing to comply with the December 3, 2003 judgment, which required Respondent to pay
22 the \$75,545.00 to Mr. Lagorio from his CTA, and by delaying the payment from December 3, 2003 until
23 June 2004, Respondent wilfully disobeyed an order requiring him to do an act connected with, or in the
24 course of, his profession, which he ought in good faith to have done, in violation of Business and
25 Professions Code, Section 6103.

26 – By making misrepresentations: (1) to the court on October 21, 2003, and December 29, 2003,
27 and (2) to Mr. Nord on October 20, 2003, and March 9, 2004, that he continued to hold the \$75,545.00
28 in his CTA after significantly less than that amount remained in the CTA, Respondent wilfully

1 committed acts involving dishonesty in violation of Business and Professions Code, Section 6106.

2
3 **Case no. 04-O-13755 (NSF Trust Account Checks)**

4 19. On June 18, 2004, Respondent's client Jeff Gabica paid Respondent with a check for
5 \$2000.00, post-dated to June 24, 2004.

6 20. The same day, June 18, 2004, Respondent wrote out check no. 1199 from his Client Trust
7 Account (CTA), payable to himself in the amount of \$2000.00.

8 21. Between June 5, 2004, and July 7, 2004, the balance in Respondent's CTA had ranged from
9 \$241.00 to \$569.00. At the time he wrote check no. 1199 to himself he should have known Gabica's
10 check had not yet cleared, as it had not even been presented to the bank for payment.

11 22. On June 21, 2004, Gabica contacted Respondent and stated that his check could be
12 deposited early. Respondent then deposited Gabica's check with the bank administering his CTA.
13 However, the bank rejected Gabica's check as it was post-dated to three days later.

14 23. The same day, June 21, 2004, Respondent presented check no. 1199 for payment out of his
15 CTA. The next day, however, Respondent's CTA check no. 1199 was returned due to insufficient funds
16 in his CTA, as Gabica's check had not been honored.

17 24. Respondent presented check no. 1199 when he should have known there were insufficient
18 funds in his CTA to pay the check. Although Respondent purposefully and knowingly deposited check
19 no. 1199 before Gabica's check had cleared, he mistakenly believed the law allowed him to rely on
20 credit he believed would be extended by his bank to cover insufficient funds. Respondent's reliance on
21 bank policy contrary to State Bar rules amounted to gross negligence.

22 **Conclusion of law – case 04-O-13755**

23 – By issuing check no. 1199 drawn on his CTA when he knew there were insufficient funds in
24 the account, Respondent committed an act involving moral turpitude, in wilful violation of Business and
25 Professions Code section 6106.

26 **Case no. 05-O-3037 (NSF Trust Account Checks)**

27 25. Paragraphs 1 through 24 above are incorporated herein.

28 26. On May 6, 2005, Respondent wrote a check in the amount of \$2500.00 in personal funds,

1 out of a bank account that was not a client trust account, and deposited it into his Client Trust Account
2 at Washington Mutual Bank (the "CTA"). Respondent deposited these personal funds into his CTA to
3 replenish the account.

4 27. On May 20, 2005, Respondent deposited a check from a corporate client called Tan-X, in
5 the amount of \$100.00, into his CTA.

6 28. On May 27, 2005, Respondent deposited another check from Tan-X, this time in the amount
7 of \$1150.00, into the CTA.

8 29. Without waiting for the second Tan-X check to clear, on May 31, 2005, Respondent wrote
9 and presented for payment check number 1406 from the CTA in the amount of \$250.00, made payable
10 to himself. In the memo line of check no. 1406 it read "Bohr." Bohr is another client of Respondent's
11 who paid Respondent by check several days before, which Respondent deposited into his CTA on May
12 31, 2005, the same day he took out fees ostensibly from the Bohr money as represented by check no.
13 1406. At the time he submitted check no. 1406 for payment, Respondent knew Bohr's check had not
14 yet cleared.

15 30. The next day, June 1, 2005, Respondent wrote and presented check no. 1408 from his CTA
16 in the amount of \$500.00, made payable to himself. In the memo line of check no. 1408 he wrote
17 "Gaumer/Carlson." Gaumer and Carlson were clients of Respondents who paid him \$3000.00 with a
18 check that he deposited into his CTA on June 1, 2005. Just as with check no. 1406, Respondent wrote
19 check no. 1408 to himself without waiting for the corresponding clients' funds to become available in
20 his CTA.

21 31. Neither check no. 1406 or 1408 were related to Respondent's representation of Tan-X.

22 32. On June 2, 2005, Washington Mutual informed Respondent in writing that Tan-X's check
23 for \$1150.00, which had been deposited on May 27, 2005, was being declined for insufficient funds.
24 Washington Mutual also informed Respondent that as this check was being declined the CTA lacked
25 sufficient funds to cover check no. 1406. As a result, on June 2, 2005, check no. 1406 was returned due
26 to insufficient funds.

27 33. On June 3, 2005, Washington Mutual informed Respondent that check no. 1408 was
28 likewise being returned for insufficient funds.

1 34. On June 7, 2005, Respondent resubmitted check no. 1406. It was again returned the same
2 day for insufficient funds. On June 8, 2005, Respondent resubmitted check no. 1408. It too was
3 returned a second time due to insufficient funds.

4 35. Respondent issued check numbers 1406 and 1408 when he knew or should have known that
5 there were insufficient funds in his CTA to pay the checks.

6 36. Although Respondent purposefully and knowingly deposited check nos. 1406 and 1408
7 before there were sufficient funds to cover them, he mistakenly believed the law allowed him to rely on
8 credit extended by his bank, and he believed bank policy to be that it would cover insufficiencies. His
9 misreliance on the bank policy, contrary to State Bar rules, amounted to gross negligence. Moreover,
10 since one year earlier Respondent was on notice that the bank's practice could not always be relied on,
11 his actions amounted to reckless behavior with respect to his client trust account.

12 **Conclusions of law – case no. 05-O-3037**

13 – By issuing checks 1406 and 1408 drawn on his CTA when he knew there were insufficient
14 funds in his account to cover the checks, and by knowingly commingling personal funds in his CTA,
15 Respondent wilfully committed acts involving moral turpitude in wilful violation of Business and
16 Professions Code sec. 6106.

17 **V. FACTS SUPPORTING MITIGATION – SECTION C, PAGE 3**

18 **Family Problems.** At the time of the misconduct, around 2003, Respondent and his wife had
19 separated and re-united several times. He was living in a small room off the garage and there were
20 periods when they were not speaking. His wife communicated their problems, in dramatic fashion, to
21 their children, which at times, resulted in their acting out at school. Respondent and his wife were in
22 counseling with their priest at the time. These problems contributed to the misconduct, as they
23 contributed to his anxiety and associated depression.

24 **Severe Financial Stress and Connection to Misconduct**

25 Respondent reports having frequently used alcohol and marijuana from the early 1970s to April
26 2004. He was convicted three times of DUI between 1979 and 1984. That and his several-times-a-day
27 marijuana use caught up with him and affected his personal and professional lives. His substance abuse
28 clouded and affected his judgment. By 2002 he experienced a significant drop in his law practice

1 income, which ordinarily would have resulted in his working harder to bring in more clients. However,
2 after many years of drug use he had lost motivation and stopped bringing in new clients.

3 To compound matters, Respondent neglected his accounts receivable and got behind in paying
4 his own bills, including mortgage payments, car payments and credit card payments. He also defaulted
5 on an SBA loan. In 2003 he nearly lost his house through foreclosure and his law practice due to his
6 poor finances. He moved his law office into his house to save money.

7 It was around this time that he took the Tebaldi case when he normally would have turned it
8 down as being outside his area of expertise. Due to his chronic drug and alcohol use his judgment was
9 so impaired that he thought he could "temporarily" borrow from the Tebaldi money he held in trust to
10 pay his bills and then reimburse the money through a refinance on his house. To cover, he ended up
11 lying to his wife, the court, his clients and the attorney for the estate.

12 He had hit rock bottom due to the trouble with the Tebaldi matter and his own family life, and in
13 April 2004 he began participating in the bar's Lawyers' Assistance Program. He has been sober since
14 that time.

15 **VI. DISMISSALS**

16 The parties respectfully request the court dismiss the following counts, in the furtherance of
17 justice:

- 18 i. Case No. 04-O-11783, Count Two (RPC Rule 4-100(B)(4));
- 19 ii. Case No. 04-O-11783, Count Four (B&P Code §6068(d));
- 20 iii. Case No. 04-O-11783, Count Six (RPC Rule 4-100(A)); and
- 21 iv. Case No. 05-O-3037, Count Two (RPC 4-100(A)).

22 **VIII. RULE 133(12) NOTICE**

23 The notice referred to on Page 1, Section A(6) was done in writing dated July 19, 2006.

24 **IX. SUPERSEDING EFFECT OF STIPULATION**

25 The parties' stipulation as to facts and conclusions of law lodged on October 19, 2005, shall be
26 superseded upon the receipt by the court of the instant stipulation as to facts and conclusions of law.
27 This stipulation does, and is meant to, supersede entirely the parties' stipulation lodged with the court on
28 October 19, 2005, whether the earlier stipulation is actually withdrawn or not.

(Do not write above this line.)

In the Matter of MARC AARON GOLDBACH Member No.: 139318	Case number(s): 04-O-11783-RAP; 04-O-13755; 05-O-03037
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

<u>7-21-06</u> <small>Date</small>	 <small>Respondent's signature</small>	<u>MARC AARON GOLDBACH</u> <small>Print name</small>
<u>7/27/06</u> <small>Date</small>	 <small>Respondent's Counsel's signature</small>	<u>ARTHUR L. MARGOLIS</u> <small>Print name</small>
<u>7/31/06</u> <small>Date</small>	 <small>Deputy Trial Counsel's signature</small>	<u>BROOKE A. SCHAFER</u> <small>Print name</small>

(Do not write above this line.)

In the Matter of MARC AARON GOLDBACH Member No.: 139318	Case number(s): 04-O-11783-RAP; 04-O-13755; 05-O-03037
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

10/23/06
Date



Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 23, 2006, I deposited a true copy of the following document(s):

ORDER

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDERS

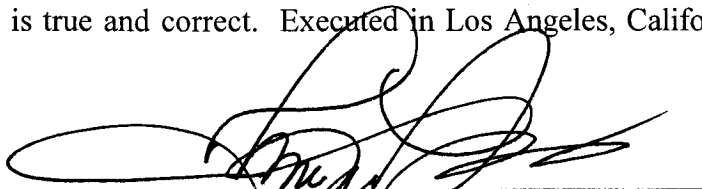
**CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR COURT'S
ALTERNATIVE DISCIPLINE PROGRAM**

by personally delivering such documents to the following individuals at 1149 S. Hill St. Los Angeles Ca 90015:

BROOKE SCHAFER

ARTHUR MARGOLIS

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 23, 2006.**



Johnnie Lee Smith
Case Administrator
State Bar Court

cc: Probation Dept
LAP