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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>San Francisco</b>		
Counsel For The State Bar <b>Margaret P. Warren</b> 1149 S. Hill Street Los Angeles, CA 90015-2299 (213) 765-1342  Bar # <b>108774</b>	Case Number (s) <b>08-C-13180 &amp; 09-N-10046</b> (Consol.)-LMA	(for Court's use)  <p style="text-align: center; font-size: 1.2em;"><b>PUBLIC MATTER</b></p> <p style="text-align: center; font-size: 1.5em;"><b>FILED</b> <i>ADS</i></p> <p style="text-align: center;">FEB 02 2011</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
In Pro Per Respondent  <b>Thomas H. Merdzinski, # 45795-112</b> FCI La Tuna Federal Correctional Institution P.O. Box 3000 Anthony, NM 88021  Bar # <b>152148</b>	Submitted to: <b>Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT  <b>DISBARMENT</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: <b>Thomas H. Merdzinski</b>  Bar # <b>152148</b>  A Member of the State Bar of California (Respondent)		

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 **5/7/91**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **(9)** pages, not including the order.
- (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."



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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) 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.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs to be awarded to the State Bar
  - Costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - Costs entirely waived
- (9) ORDER OF INACTIVE ENROLLMENT:  
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 220(c).

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

- (1)  **Prior record of discipline**
- (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If respondent has two or more incidents of prior discipline, use space provided below:
- (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. **Please see p. 7, below.**
- (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 victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**Please see p. 8, below.**

**D. Discipline: Disbarment.**

**E. Additional Requirements:**

- (1) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
  
- (2)  **Restitution:** Respondent must make restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_. If the Client Security Fund has reimbursed \_\_\_\_\_ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than \_\_\_\_\_ days from the effective date of the Supreme Court order in this case.
  
- (3)  **Client Security Fund Reimbursement:** Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment obligation is enforceable as provided under Business and Professions Code section 6140.5.
  
- (4)  **Other:**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                                Thomas H. Merdzinski  
CASE NUMBER(S):                                08-C-13180 & 09-N-10046 (Consol.)

**Case No. 08-C-13180**

**PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING.**

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

2. On July 22, 2008, an Information was filed in the United States District Court for the Central District of California, Eastern Division, in the matter entitled *United States of America v. Thomas Henry Merdzinski*, case no. ED CRO8-00139, charging Respondent with one felony count of knowingly possessing one or more computers and computer hard drives, which contained at least one image of child pornography, as defined in Title 18, U.S.C., Section 2256(8)(A), that had been shipped and transported in interstate and foreign commerce by any means, including by computer, knowing that the image was of child pornography, in violation of Title 18, U.S.C., Section 2252(A)(a)(5)(B). On that same date, Respondent pled guilty to violating Title 18, U.S.C., Section 2252(A)(a)(5)(B). On that same date, Respondent's conviction of said offense was entered.

3. On March 16, 2009, Respondent was sentenced to be imprisoned in federal prison for a term of fifty-one (51) months; and was further ordered to be on supervised release for life, under the terms and conditions of the U.S. Probation Office and General Order 318.

4. Effective October 20, 2008, Respondent was placed on interim suspension following his conviction of one felony count of knowingly possessing one or more computers and computer hard drives, which contained at least one image of child pornography, as defined in Title 18, U.S.C., Section 2256(8)(A), that had been shipped and transported in interstate and foreign commerce by any means, including by computer, knowing that the image was of child pornography, in violation of Title 18, U.S.C., Section 2252(A)(a)(5)(B).

5. On September 17, 2010, the State Bar transmitted a Supplemental Transmittal of Records of Conviction in this matter to the Review Department of the State Bar Court, and concurrently filed a

Motion for Summary Disbarment.

6. On October 8, 2010, the Review Department of the State Bar Court issued an order denying the State Bar's September 17, 2010 Motion for Summary Disbarment, determining that violation of Title 18, U.S.C., section 2252(A)(a)(5)(B) (possession of child pornography) "is not a crime which inherently involves moral turpitude" and referring the matter to the Hearing Department of the State Bar Court "for a hearing and decision recommending the discipline to be imposed in the event that the hearing department finds that the facts and circumstances surrounding the felony violation involved moral turpitude or other misconduct warranting discipline."

**FACTS AND CIRCUMSTANCES SURROUNDING RESPONDENT'S CONVICTION.**

7. Respondent admits that the following facts are true:

8. Pursuant to Respondent's written plea agreement, filed on July 22, 2008 in Case No. ED CRO8-00139, Respondent and the United States Attorney's Office agreed and stipulated to the following statement of facts in support of Respondent's guilty plea<sup>1</sup>:

On or about April 2, 2008, in Riverside County, California, defendant [Respondent] knowingly possessed over 600 [six hundred] child pornography images and videos, contained on seven [7] computer hard drives (collectively "the child pornography images"). As defendant knew, the child pornography images contained visual depictions of prepubescent children and infants engaged in sexually explicit conduct, including several images and videos of prepubescent children engaged in sadistic and masochistic acts, such as adult males engaged in vaginal and anal intercourse with prepubescent girls, some as young as infants, and prepubescent children and infants being subject to acts of abuse, humiliation, and degradation, and which were likely to have been painful to the child and infant victims depicted in the child pornography images, including the anal penetration of such children with foreign objects.

Defendant knew that the production of the child pornography images involved the use of prepubescent children and infants engaged in sexually explicit conduct, including victims whose identities are known to law enforcement ("the known victims"). Several of the child pornography images depicting the known victims were shipped and transported in either interstate or foreign commerce given that those images are known to law enforcement to have been produced outside the State of California. Defendant also knew that the child pornography images and videos he possessed had been shipped and transported in interstate or foreign commerce by means including a computer.

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<sup>1</sup> As set forth in the plea agreement, the facts contained therein are "not meant to be a complete recitation of all facts relevant to the underlying criminal conduct or all facts known to defendant that relate to that conduct", but suffice to support a plea of guilty to the charge.

## **FACTS AND CIRCUMSTANCES INVOLVING MORAL TURPITUDE.**

9. Respondent admits and acknowledges that the facts and circumstances of his conviction involve moral turpitude.

### **Case No. 09-N-10046**

#### **FACTS:**

10. On October 1, 2008, the Review Department of the State Bar Court filed an Order in Case No. 08-C-13180, ordering Respondent intermily suspended, pursuant to Business and Professions Code section 6102, following his felony conviction for violating Title 18, U.S.C., section 2252(A)(a)(5)(B), pending final disposition of Case No. 08-C-13180 (hereinafter, "Order"). The Order included a requirement that Respondent comply with Rule 9.20, California Rules of Court, by performing the acts specified in subdivisions (a) and (c) within thirty (30) and forty (40) days, respectively, after the effective date of the Order. On October 1, 2008, the State Bar Court properly served upon Respondent a copy of the Order. Respondent received the Order.

11. The Order became effective on October 20, 2008. Thus Respondent was ordered to comply with subdivision (a) of rule 9.20 of the California Rules of Court no later than November 19, 2008, and was ordered to comply with subdivision (c) of rule 9.20 no later than November 29, 2008.

12. On February 18, 2009, Respondent filed his declaration of compliance with rule 9.20 (a), as required by subdivision (c) of rule 9.20.

13. Respondent failed to timely file with the clerk of the State Bar Court a declaration of compliance with rule 9.20 (a), California Rules of Court, as required by rule 9.20 (c).

#### **CONCLUSIONS OF LAW:**

14. By not timely filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20 (c), Respondent failed to comply with the provisions of the Order requiring compliance with rule 9.20, California Rules of Court, in willful violation of rule 9.20, California Rules of Court.

#### **AGGRAVATING CIRCUMSTANCES.**

15. **Harm:** Respondent's misconduct significantly harmed the public, in that the purchase and possession of child pornography contributes directly to the ongoing sexual exploitation for profit of children; the images permanently record the acts of abuse; and the continued existence of the images causes continuing harm to the children appearing in those images.

## **MITIGATING CIRCUMSTANCES.**

16. Respondent cooperated with the State Bar by entering into this stipulation, thus obviating the need for a trial.

## **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was January 18, 2011.

## **AUTHORITIES SUPPORTING DISCIPLINE**

**Standard 1.3** provides:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

**Standard 3.2** provides, in pertinent part:

Final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission shall result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed.

"Disbarments, and not suspensions, have been the rule rather than the exception in cases of serious crimes involving moral turpitude." *In re Crooks* (1990) 51 Cal.3d 1090, 1101. See also *In re Lesansky* (2001) 25 Cal.4<sup>th</sup> 11.

### **Violations of rule 9.20 (formerly, rule 955) of the California Rules of Court:**

Untimely filing of a rule 955 affidavit is "itself a cause of discipline." *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593, 600.

"The sanction recognized and generally imposed by the Supreme Court in rule 955 [now rule 9.20] wilful violations is disbarment. [Citation omitted.] When [disbarment] has not been imposed, the attorneys had complied with the notification requirement, orally or in writing, to all their clients, participated in the disciplinary process, and presented substantial mitigating evidence regarding the noncompliance and their present good character." *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322, 334.



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In the Matter of Thomas H. Merdzinski, No. 152148	Case number(s): 08-C-13180 & 09-N-10046 (Consol.)
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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 Fact, Conclusions of Law and Disposition.

1-26-2011  
Date

Thomas H. Merdzinski  
Respondent's Signature

Thomas H. Merdzinski  
Print Name

\_\_\_\_\_  
Date

[Signature]  
Respondent's Counsel Signature

\_\_\_\_\_  
Print Name

01 FEB 11  
Date

[Signature]  
Deputy Trial Counsel's Signature

Margaret P. Warren  
Print Name

(Do not write above this line.)

In the Matter of <b>Thomas H. Merdzinski, No. 152148</b>	Case Number(s): <b>08-C-13180 &amp; 09-N-10046 (Consol.)</b>
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**ORDER**

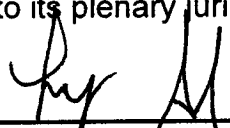
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates 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. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Respondent **Thomas H. Merdzinski** is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 490(b) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Feb. 2, 2011  
Date

  
\_\_\_\_\_  
Judge of the State Bar Court

**LUCY ARMENDARIZ**

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 San Francisco, on February 2, 2011, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND  
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

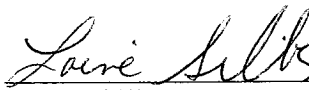
THOMAS H. MERDZINSKI  
79321 BOWDEN DR  
BERMUDA DUNES, CA 92203

THOMAS H. MERDZINSKI  
FCI LA TUNA /FEDERAL  
CORRECTIONAL INSTITUTION  
P.O. BOX 3000  
ANTHONY, NM 00088-8021

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

MARGARET WARREN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 2, 2011.



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Laine Silber  
Case Administrator  
State Bar Court