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<b>State Bar Court of California Hearing Department San Francisco REPROVAL</b>		
<b>Counsel For The State Bar</b>  <b>Robert K. Sall</b> <b>Special Deputy Trial Counsel</b> <b>Sall Spencer Callas &amp; Krueger</b> <b>32351 Coast Highway</b> <b>Laguna Beach, CA 92651</b>  Bar # 83782	Case Number(s): <b>13-O-13293</b>	For Court use only  <b>PUBLIC MATTER</b>  <b>FILED</b>  AUG 11 2017 <i>MS</i>  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<b>Counsel For Respondent</b>  <b>Paul F. DeMeester</b> <b>Smith &amp; DeMeester</b> <b>1766 18<sup>th</sup> St. #A</b> <b>San Francisco, CA 94107</b>  Bar # 148578	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>PUBLIC REPROVAL</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: <b>McKowan, Melissa Renee Anne</b>  Bar # 203031  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 **December 1, 1999**.
- (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 entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **8** 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."



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (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 are added to membership fee for calendar year following effective date of discipline (public reproof).
  - Case ineligible for costs (private reproof).
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.
- (9) The parties understand that:
- (a)  A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
  - (b)  A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
  - (c)  A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline**
- (a)  State Bar Court case # of prior case **11-O-13915 and 11-O-13919**
  - (b)  Date prior discipline effective **March 4, 2013**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Bus. & Prof. Code §6106**
  - (d)  Degree of prior discipline **Private Reproof**
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."

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- (2)  **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3)  **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation. **The Respondent's May 11, 2013 statement in her email to a potential witness that: "Every agency that has been forced into investigating this case by Balfour has found that her accusations are entirely false and have no bases whatsoever" was a misrepresentation.**
- (4)  **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5)  **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6)  **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.
- (7)  **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.
- (8)  **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10)  **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11)  **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. 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 likely to recur.
- (2)  **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigation and proceedings.

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- (4)  **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 with a good faith belief that was honestly held and objectively reasonable. **Respondent asserts that her statement was made in good faith because she believed the statement referred to investigation of the Ayres case by other agencies.**
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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. **Respondent has submitted more than thirty (30) letters supporting Respondent's good character from members of the bar, including colleagues and adverse counsel.**
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

#### **D. Discipline:**

- (1)  **Private reproof (check applicable conditions, if any, below)**
- (a)  Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b)  Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).
- or
- (2)  **Public reproof (Check applicable conditions, if any, below)**

#### **E. Conditions Attached to Reproval:**

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- (1)  Respondent must comply with the conditions attached to the reproof for a period of **eighteen (18) months**.
- (2)  During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of reproof. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the reproof conditions period, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.

- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of reproof with the probation monitor to establish a manner and schedule of compliance. During the reproof conditions period, Respondent must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reproof.
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.  
 No Ethics School recommended. Reason: **Respondent completed Ethics School in August 2015.**
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10)  Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reproof.

No MPRE recommended. Reason:

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(11)  The following conditions are attached hereto and incorporated:

Substance Abuse Conditions

Law Office Management Conditions

Medical Conditions

Financial Conditions

**F. Other Conditions Negotiated by the Parties:**

**Respondent shall refrain from posting on any blogs or in social media any comments concerning the Ayres case, the Complaining Witness or the subject matter of Respondent's past or pending cases she has handled as a Deputy DA;**

**Nothing in this Stipulation, however, shall be construed to prevent Respondent from responding truthfully, in a public forum, to any further publicity about Respondent generated by Victoria Balfour, or to impair First Amendment rights consistent with her duties under Business & Professions Code §6106.**

**Respondent acknowledges that the resolution of this disciplinary charge does not resolve any other complaints against Respondent that may or may not presently exist.**

Attachment language (if any):

### **STIPULATED FACTS**

At all times relevant herein, Respondent was employed by the San Mateo County District Attorney's Office as a Prosecutor. In this capacity, Respondent was the assigned Deputy District Attorney handling the prosecution of felony charges against William H. Ayres, MD, in San Mateo County in the matter entitled People v. Ayres. In the initial prosecution of that matter, the jury deadlocked 11-1 in favor of conviction, and the trial court declared a mistrial on July 27, 2009. The prosecution of Dr. Ayres involved charges pertaining to child molestation. There was considerable negative publicity concerning the trial in various blog postings, and several followers of the case were posting severe criticism of the District Attorney's office and the Respondent.

In connection with a potential retrial of Dr. Ayres after the mistrial, the Respondent had communications with Barbara J. Ross ("Ross"), the mother of an out-of-statute victim of Dr. Ayres. Respondent made a false statement to Mrs. Ross, which was admitted by Respondent in prior disciplinary proceedings. Respondent's dishonesty resulted in a reproof order on March 4, 2013 in prior disciplinary proceedings in Case Nos. 11-O-13919; 11-O-13915.

During 2010, complaining witness Victoria Balfour sent several written complaints about Respondent's dishonesty to Respondent's employer, During 2010-2012, the San Mateo County District Attorney's office conducted an internal investigation of the Ross and Balfour complaints of dishonesty against Respondent. On or about September 21, 2012, the San Mateo County District Attorney's office took disciplinary action against Respondent related to the Ross incident.

In May 2013, Respondent was the assigned prosecutor employed with the San Mateo County District Attorney's office for the retrial of William H. Ayres, M.D., in the matter entitled People v. Ayres. Respondent wrote to a potential witness by email on May 11, 2013 in an effort to encourage the witness' cooperation to testify. Respondent stated in this email: "I would be happy to meet with you both ahead of time to discuss your testimony and to talk about whatever your concerns are about participating. I would certainly be happy to dispel the impressions you have of me that have come from unreliable and biased sources and I can share with you the truth about everything that has happened in this case. Believe me, nothing is as the bloggers say. Every agency that has been forced into investigating this case by Balfour has found that her accusations are entirely false and have no bases whatsoever."

Respondent's statement that: "Every agency that has been forced into investigating this case by Balfour has found that her accusations are entirely false and have no bases whatsoever" was untrue.

### **CONCLUSIONS OF LAW**

**Count I: Violation of Business & Professions Code §6106.**

By Respondent willfully making this untrue statement, Respondent committed an act of dishonesty in willful violation of Business and Professions Code §6106.

**Count II. Alleged Violation of Business & Professions Code §6068(d). Count II is dismissed as being duplicative.**

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In the Matter of: McKowan, Melissa Renee Anne	Case number(s): 13-O-13293
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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, Conclusions of Law, and Disposition.

July <u>27</u> , 2017 Date	 Respondent's Signature	Melissa Renee Anne McKowan Print Name
July <u>27</u> , 2017 Date	 Respondent's Counsel Signature	Paul F. DeMeester Print Name
July <u>31</u> , 2017 Date	 Deputy Trial Counsel's Signature	Robert K. Sall Print Name



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In the Matter of: Melissa Renee Anne McKowan Bar # 148578	Case Number(s): 13-O-13293
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### REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

1. On p. 2, par. B. (1)(b) Date prior discipline effective: Delete "March 4, 2013" and substitute in its stead "March 26, 2013."

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 5.58(E) & (F), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

**Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.**

Date August 11, 2017 PAT E. McELROY  
PAT E. McELROY  
Judge of the State Bar Court

**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 August 11, 2017, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

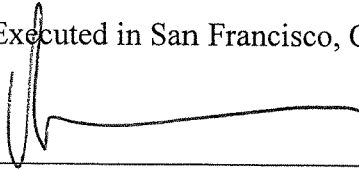
in a sealed envelope for collection and mailing on that date as follows:

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

PAUL F. DEMEESTER  
SMITH & DEMEESTER  
1766 18TH ST #A  
SAN FRANCISCO, CA 94107

ROBERT KEVIN SALL  
SALL SPENCER CALLAS & KRUEGER, ALC  
32351 COAST HWY  
LAGUNA BEACH, CA 92651

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 11, 2017.

  
\_\_\_\_\_  
Vincent Au  
Case Administrator  
State Bar Court