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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		
<p>Counsel For The State Bar</p> <p>Sherell N. McFarlane Senior Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017 (213) 765-1288</p> <p>Bar # 217357</p>	<p>Case Number(s): 15-O-10521</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 2em;">PUBLIC MATTER</p> <p style="text-align: center; font-size: 1.5em;">FILED</p> <p style="text-align: center; font-size: 1.2em;">AUG 10 2016</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Ellen A. Pansky Pansky Markle Ham LLP 1010 Sycamore Ave Unit 308 South Pasadena, CA 91030 (213) 626-7300</p> <p>Bar # 77688</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: BYRON TALBOT BALL</p> <p>Bar # 150195</p> <p>A Member of the State Bar of California (Respondent)</p>		

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 4, 1990**.
- (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 **13** 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.
 - 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.

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
 - (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 or a separate attachment entitled "Prior Discipline."
- (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.
- (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..

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- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See Attachment to Stipulation at page 9.**
- (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. See Attachment to Stipulation at page 9.
- (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 investigations and proceedings.
- (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.
- (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.

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- (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. **See Attachment to Stipulation at pages 9-10.**
- (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

No Prior Record of Discipline, Community/Civic Involvement and Pre-filing Stipulation. See Attachment to Stipulation at pages 10-11.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **one (1) year**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

The above-referenced suspension is stayed.

- (2) **Probation:**
- Respondent is placed on probation for a period of **one (1) year**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) 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

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conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

- (4) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. 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 probation during the preceding calendar quarter. Respondent must also state 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 days, that report must be submitted on the next 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 period of probation and no later than the last day of probation.

- (5) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor 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 probation monitor.
- (6) 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 probation conditions.
- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8) 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.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** 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. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: BYRON TALBOT BALL

CASE NUMBER: 15-O-10521

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 15-O-10521 (State Bar Investigation)

FACTS:

1. On December 10, 2013, the Los Angeles Times published an article entitled “Kaiser Permanente Reports Privacy Breach to 49,000 Patients.” The article quoted Ginger Buck, one of the Kaiser Permanente’s (hereinafter “Kaiser”) patients whose medical information had been breached, discussing the incident.
2. On December 18, 2013, Ms. Buck received a telephone call from an individual who identified himself as a private investigator. The investigator formed Ms. Buck that he had been hired by an attorney in Washington D.C. to conduct a background investigation on her. The investigator inquired of Ms. Buck if she would be willing to speak with the attorney, and Ms. Buck indicated that she would be willing to do so.
3. On December 18, 2013, shortly after Ms. Buck’s telephone conversation with the investigator, respondent called Ms. Buck. Respondent informed her that he had read her statement in the subject December 10, 2013, Los Angeles Times article. During the conversation, Ms. Buck informed respondent that on or about December 3, 2013, she received a letter from Kaiser, which informed her of the data breach. Respondent requested that Ms. Buck send him the Kaiser letter immediately, and discussed with her whether she wished to pursue a claim against Kaiser.
4. Respondent did not obtain Ms. Buck’s consent to file a lawsuit in her name against Kaiser during the December 18, 2013 telephone conversation with Ms. Buck. Ms. Buck did not authorize respondent to file a lawsuit against Kaiser on her behalf.
5. Following the December 18, 2013 telephone conversation with respondent Ms. Buck called the investigator and requested that he provide her with the name and contact information of the Washington D.C. attorney. The investigator subsequently provided Ms. Buck with the name and contact information for an attorney, who resigned from the California State Bar on May 21, 2006.
6. On December 19, 2013, respondent filed a class action lawsuit, naming Ms. Buck as lead class plaintiff, in Los Angeles County Superior Court entitled *Ginger Buck v. Kaiser Permanente International, et al.*, under case number BC531253 (hereinafter “the lawsuit”).

7. On December 20, 2013, the investigator emailed a copy of respondent's retainer agreement to Ms. Buck. Ms. Buck did not execute or return the retainer agreement to the investigator or to respondent. Ms. Buck did not contact respondent to advise him that she did not wish to be represented.

8. On January 6, 2014, the court had issued an Initial Status Conference Order (hereinafter "ISC order") in which it scheduled an ISC for April 3, 2014, and ordered counsel for all parties to attend. The ISC order directed respondent, as plaintiff's counsel, to serve the ISC order on all counsel and/or parties within five days of the service of the ISC order.

9. Ms. Buck did not learn that the lawsuit had been filed until January 31, 2014.

10. On February 13, 2014, Ms. Buck sent an email to respondent in which she informed him that he did not have a signed retainer agreement from her and requested that he dismiss the lawsuit with prejudice and provide her with a conformed copy of the dismissal.

11. On February 19, 2014, respondent filed a request for dismissal of the entire lawsuit by filing Judicial Counsel Form CIV-110.

12. Respondent did not serve all counsel and/or parties with the ISC order and failed to appear at the April 3, 2014 ISC.

13. In a minute order issued on April 3, 2014, the court noted the presence of Form CIV-110 in the court file, indicated in its minute order that Judicial Counsel Form CIV-110 may not be used to dismiss class allegations, and directed respondent to comply with rule 3.770 of California Rules of Court before the court may properly consider any request for dismissal of class action allegations. In its April 3, 2014 minute order the court scheduled an Order to Show Cause re California Rules of Court 3.770 Declaration for May 12, 2014 (hereinafter "May 12, 2014 OSC") and further directed respondent to give notice.

14. Respondent received the April 3, 2014 minute order.

15. Respondent failed to comply with the court's April 3, 2014 minute order requiring him to serve and file of a declaration regarding dismissal in conformity with rule 3.770 of California Rules of Court, and failed to appear at the May 12, 2014 OSC.

16. Therefore, on May 12, 2014, the court issued a minute order setting another OSC hearing for June 17, 2014 regarding why sanctions should not be imposed upon plaintiff. The May 12, 2014 minute order ordered respondent to appear on June 17, 2014 and to file a declaration five days prior to the hearing indicating why sanctions should not be imposed for (1) his failure to appear on April 3, 2014 and May 12, 2014; (2) his failure to comply with the court's minute order of April 3, 2014, and (3) his failure to file declarations pursuant to rule 3.770 of California Rules of Court.

17. In the May 12, 2014 minute order, the court also issued a *nunc pro tunc* order striking the filing of Judicial Council Form CIV-110. The May 12, 2014 minute order, which was duly served on respondent by mail, further directed respondent to give notice to all parties.

18. By June 17, 2014, respondent had not filed any declarations, and on that date the court on its own motion continued the June 17, 2014 OSC hearing to June 27, 2014.

19. Respondent failed to appear at the continued OSC hearing on June 27, 2014. However, Ms. Buck appeared and filed a declaration with the court in which she recited respondent's conduct as set

forth above. The court took the June 27, 2014 OSC hearing under submission on that date, and directed Ms. Buck to file a declaration regarding the expenses she incurred as a result of respondent's conduct.

20. On July 10, 2014, Ms. Buck filed a declaration with the court in which she declared that she incurred \$367.00 in out-of-pocket expenses as a result of respondent's conduct.

21. Thereafter, on August 22, 2014 the court filed a Ruling and Order in which it specifically found that: "Mr. Ball filed a frivolous lawsuit that he knew had no merit, naming a plaintiff who had no knowledge of the lawsuit and who never authorized, nor had any interest in being a part of, such a lawsuit against Kaiser. The Court specifically finds that Mr. Ball failed to follow the Initial status Conference Order dated January 6, 2014 and violated California Rules of Court Rule 3.770. Based upon the above, the Court finds good cause to order, pursuant to CRC Rule 2.30, Code of Civil Procedure §575.2, and Los Angeles Superior Court Rule 3.10, the following sanctions: (1) That Bryon T. Ball pay, within thirty days, sanctions of \$367.00 to Ginger Buck as reimbursement for her out-of-pocket expenses incurred as a result of Mr. Buck's filing of a frivolous lawsuit; (2) That Bryon T. Ball pay, within thirty days, sanctions to the Court of \$ 1,500.00."

22. The court then ordered the complaint be dismissed without prejudice in the interests of justice. Concurrent with the filing of its Ruling and Order, the court filed a minute order on August 22, 2014 in which it ordered respondent to pay sanctions of \$367 to Ms. Buck and sanctions of \$1,500 to the court, each within thirty days of the order. Respondent timely received the August 22, 2014 orders.

23. Respondent did not comply with the court's sanction order that he pay \$1,500 to the court until on or before January 12, 2015, and only after he had been contacted by the State Bar regarding why the sanctions had not been paid.

24. Respondent did not comply with the court's sanction order that he pay \$367 to Ms. Buck until on or before January 13, 2015, and only after he had been contacted by the State Bar regarding why the sanctions had not been paid.

25. Respondent did not report the court's imposition of \$1,867 in monetary sanctions against him to the State Bar.

CONCLUSIONS OF LAW:

26. By filing a lawsuit on or about December 19, 2013 in Ginger Buck's name without her authority, entitled *Ginger Buck v. Kaiser Permanente International, et al.* in Los Angeles County Superior Court under case number BC531253, respondent appeared as an attorney for Ms. Buck without her authority, in willful violation of Business and Professions Code, section 6104.

27. By failing to serve the initial status conference order on all counsel or parties, and attend the initial status conference scheduled for April 3, 2014 as ordered by court in the January 6, 2014 initial status conference order issued in the matter of *Ginger Buck v. Kaiser Permanente International, et al.*, then pending in Los Angeles County Superior Court under case number BC531253, respondent disobeyed or violated an order of the court requiring respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear in willful violation of Business and Professions Code section 6103.

28. By failing to submit a declaration and proposed order of dismissal in compliance with rule 3.770 of California Rules of Court, failing to give notice to all parties of the order to show cause hearing

regarding California Rules of Court 3.770 Declaration scheduled for May 12, 2014 and failing to attend the May 12, 2014 order to show cause hearing as ordered by the court in the April 3, 2014 minute order issued in the matter of *Ginger Buck v. Kaiser Permanente International, et al.*, then pending in Los Angeles County Superior Court under case number BC531253, respondent disobeyed or violated an order of the court requiring respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear in willful violation of Business and Professions Code section 6103.

29. By failing to attend the order to show cause hearing regarding why sanctions should not be imposed upon plaintiff scheduled for June 17, 2014, failing to file a declaration five days prior to the June 17, 2014 order to show cause hearing indicating why sanctions should not be imposed, and failing to give notice to all parties the June 17, 2014 order to show cause hearing as ordered by the court in the May 12, 2014 minute order issued in the matter of *Ginger Buck v. Kaiser Permanente International, et al.*, then pending in Los Angeles County Superior Court under case number BC531253, respondent disobeyed or violated an order of the court requiring respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear in willful violation of Business and Professions Code section 6103.

30. By failing to pay sanctions of \$367.00 to Ginger Buck within thirty days and sanctions of \$1,500 to the court within thirty days as ordered by the court in the August 22, 2014 minute order and the ruling and order issued in the matter of *Ginger Buck v. Kaiser Permanente International, et al.*, then pending in Los Angeles County Superior Court under case number BC531253, respondent disobeyed or violated an order of the court requiring respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear in willful violation of Business and Professions Code section 6103.

31. By failing to report to the State Bar a total of \$1,867 in sanctions imposed on respondent on August 22, 2014, by the court in the matter of *Ginger Buck v. Kaiser Permanente International, et al.*, then pending in Los Angeles County Superior Court under case number BC531253, respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time respondent had knowledge of the imposition of judicial sanctions against respondent in willful violation of Business and Professions Code section 6068(o)(3).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent has committed multiple acts of misconduct. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 647 [three instances of misconduct although not a pattern or practice are sufficient to support a finding that respondent engaged in multiple acts of misconduct].)

Significant Harm to the Administration of Justice (Std. 1.5(j)): Respondent's misconduct caused harm to the administration of justice. On more than one occasion, the court had to set aside time on its calendar to address the consequences occasioned by respondent's failure to comply with the court's orders. (See *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168 [attorney's misconduct significantly harmed the administration of justice by imposing a burden on the court to ensure the proper supervision of the deceased's estate and the protection of those involved in representing the estate].)

MITIGATING CIRCUMSTANCES.

Good Character (Std. 1.6(f)): Respondent's good character has been attested to by 16 individuals who are aware of his misconduct and who still hold him in high regard, lauding his integrity, honesty, competence, dedication to his clients and his community/civic involvement. Six attorneys provided character letters – two of whom have known respondent for over 16 years, two for over 30 years, and two who have known respondent for five and eight years, respectively. Three of the attorneys have worked directly with, or for respondent, and thus have had the opportunity to observe and interact with him in a professional setting and attest to his strong ethics, competence and dedication to his clients. Two retired judges who provided character letters expressed their belief that respondent has strong ethics and is well respected among his peers and in the legal community. Both retired judges have known respondent for over fifteen years, and one of the retiree was respondent's law school professor.

Four former clients provided character letters. These former clients hold respondent in high regard and believe that he always puts the interests of his client's first and that he is a highly ethical advocate. Three letters were from friends – a podiatrist who has known respondent for 45 years, one who has known him for twenty-five years and the other for six – who similarly attest to respondent's honesty, compassion, dedication to clients, strong work ethic and ties to his community. Finally, respondent's friend and a former vice chancellor of respondent's law school provided a character letter praising respondent's volunteer commitment to his alma mater including his mentoring of law students and his financial commitment to the school.

Respondent's character letters are representative of a wide range of members of the general and legal communities who are aware of respondent's misconduct in connection with the present matter, and as such, respondent is entitled to credit in mitigation for good character. (See generally *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591-592 [significant weight in mitigation accorded to three character witnesses due to their familiarity with respondent and their knowledge of his good character, work habits and professional skills].)

No Prior Record of Discipline: Respondent is entitled to mitigation for over 25 years of practice without a prior record of discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal State Bar Ct. Rptr. 41 [attorney's many years in practice with no prior discipline considered mitigating even when misconduct at issue was serious]; *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than ten years of discipline-free practice entitled to significant mitigation]; *Friedman v. State Bar* (1990), 50 Cal. 3d 235, 245 [20 years is "highly significant" mitigation].)

Community/Civic Involvement: Between 2001 and 2007, respondent was a member of the Serra Project, a non-profit organization, which provides resources for people living with HIV/AIDS who might otherwise be homeless. While a member of the Serra Project, respondent hosted the organization's annual fundraiser in 2003, 2004 and 2005, in addition to his volunteer work visiting homes and hospices of patients and participating in fundraising activities. Respondent has also devoted much time and energy as an alumnus of Pepperdine University School of Law. Since 2007, respondent has been a member of the school's Board of Visitors, which requires an annual contribution of \$25,000, as well as participation as a member of the board. Respondent has also served as a mentor to law students. Respondent has been a member of the Irish American Bar Association since 1995, serving as president from 2005-2006. In that capacity, he has devoted countless hours to better the legal profession, to guide younger lawyers, and contribute to the legal community. Respondent also participates in his children's school activities, including coaching basketball. Civic service is a mitigating circumstance. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359.)

Pre-filing Stipulation: Respondent has stipulated to facts, conclusions of law, and disposition in order to resolve this disciplinary proceedings prior to the filing of disciplinary charges, thereby avoiding the necessity of a formal proceeding and the resulting trial, and saving State Bar and State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].) By entering into this stipulation, respondent has accepted responsibility for his misconduct.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the Standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 1.7(a) further provides that, “If a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.” Here, respondent has committed six separate acts of misconduct including four instances of failing to obey court orders, one of which includes the failure to pay judicial sanctions of \$367 to Ms. Buck and \$1,500 to the court within thirty days of the order. The most severe sanction applicable to respondent’s conduct is Standard 2.12(a), which relate to respondent’s disobedience of court orders. Standard 2.12(a) provides as follows:

Disbarment or actual suspension is the presumed sanction for disobedience or violation of a court order related to the member’s practice of law, the attorney’s oath, or the duties required of an attorney under Business and Professions Code section 6068(a)(b)(d)(e)(f) or (h).

Respondent’s misconduct in this matter is directly related to practice of law. However, as set forth below neither disbarment nor actual suspension is necessary to achieve the purposes of attorney discipline.

Respondent's misconduct is mitigated by over 25 years of practice without a prior imposition of discipline, good character, pre-filing stipulation and community/civic involvement, but it is aggravated by multiple acts and harm to Ms. Buck and the administration of justice. Since the gravamen of respondent's misconduct in this single "client" matter occurred over a relatively short period of time, and evinces a failure to have competent procedures in his practice to retain clients and prosecute lawsuits he initiates, and given that the mitigating circumstances in this matter outweigh the aggravating circumstances, deviation from the range of discipline set forth in Standard 2.12(a) is appropriate. Therefore, discipline consisting one year suspension, stayed, and one year probation on the terms and conditions set forth herein is appropriate and is consistent with the Standards and will protect the public, the courts and the legal profession, maintain high professional standards, and preserve public confidence in the legal profession.

Case law also support this result. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the attorney who was found culpable of failing to perform with competence¹ in one client matter over a five-year period in violation of rule 3-110(A), and failing to report judicial sanctions and disobeying court orders received a six-month stayed suspension and one year of probation with conditions². The *Riordan* court found that the attorney's conduct was aggravated by multiple acts (assigned little weight) and harm to the administration of justice occasioned by the more than two-year delay in filing the AOB. The attorney received significant weight in mitigation for seventeen years of discipline practice, diminished weight in mitigation for good character (four witnesses, all of whom were attorneys, not wide range of references), and mitigation for entering into a factual stipulation with the State Bar. Like the attorney in *Riordan*, respondent's misconduct involves multiple acts, including the failure to obey court orders, and harm to the client/administration of justice, but unlike that attorney, he appeared for a party without authority by filing a class action lawsuit in her name. Nevertheless, the case is sufficiently analogous to support stayed suspension as the appropriate level of discipline.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of June 21, 2016, the prosecution costs in this matter are \$3,139. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT.

Pursuant to rule 3201, respondent may not receive MCLE credit for completion of the ethics courses ordered as a condition of her probation. (Rules Proc. of State Bar, rule 3201.)

¹ Despite numerous extensions, the attorney delayed filing the appellant's opening brief ("AOB") by more than two years, and disobeyed the court's orders by failing to file the AOB by the extension deadlines.

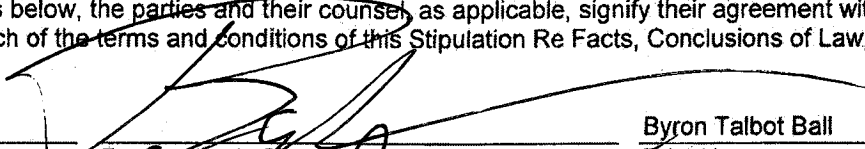
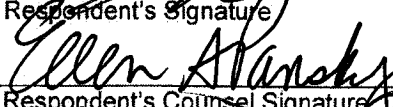
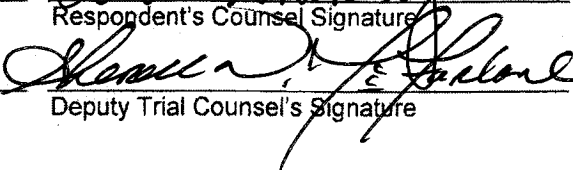
² The Hearing Department judge had recommended that the attorney in *Riordan*, who was appointed to represent the appellant in a criminal automatic appeal following a capital sentence, receive a public reproof.

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In the Matter of: Byron Talbot Ball	Case number(s): 15-O-10521
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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.

7-20-16		Byron Talbot Ball
Date	Respondent's Signature	Print Name
7/28/16		Ellen A. Pansky
Date	Respondent's Counsel Signature	Print Name
August 1, 2016		Sherell N. McFarlane
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: Byron Talbot Ball	Case Number(s): 15-O-10521
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STAYED SUSPENSION 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 5.58(E) & (F), 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.)**

Date

8/10/16


DONALD F. MILES
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 Los Angeles, on August 10, 2016, 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:

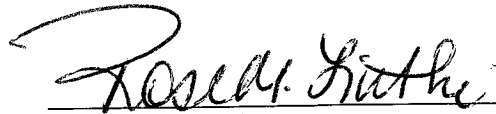
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ELLEN ANNE PANSKY
PANSKY MARKLE HAM LLP
1010 SYCAMORE AVE UNIT 308
SOUTH PASADENA, CA 91030

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

SHERELL MCFARLANE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 10, 2016.



Rose M. Luthi
Case Administrator
State Bar Court