

(Do not write above this line.)

**State Bar Court of California
Hearing Department
Los Angeles
REPROVAL**

<p>Counsel for the State Bar</p> <p>Christina Mitchell Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1077</p> <p>Bar # 245120</p>	<p>Case Number(s): 17-C-07643-YDR</p>	<p>For Court use only</p> <p>FILED E.A. OCT 09 2018 STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Scott D. Hughes 620 Newport Center Drive Suite 1100 Newport Beach, CA 92660 (714) 423-6928</p> <p>Bar # 253611</p>	<p>PUBLIC MATTER</p>	
<p>In the Matter of: JOSEPH JOHN NAZARIAN</p> <p>Bar # 299526</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 1, 2014**.
- (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 **15** 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):
- It is ordered that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.
 - Case ineligible for costs (private reproof).
 - It is ordered that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. **SELECT ONE** of the costs must be paid with Respondent's membership fees for each of the following years:

If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be 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:

- (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.
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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.
 - (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 Respondent's misconduct.
 - (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's 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 [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 Respondent's misconduct or to the State Bar during disciplinary investigation 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 Respondent's 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 Respondent.
- (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 Respondent, 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 Respondent's control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's 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 Respondent's misconduct. **See page 12.**
- (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:

Pretrial Stipulation, see page 12.

D. Discipline:

Discipline – Reproval

Respondent is **Publicly** reprovved. Pursuant to the provisions of rule 5.127(A) of the Rules of Procedure of the State Bar, this reproval will be effective when this stipulation becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the protection of the public and the interests of Respondent will be served by the following conditions being attached to this reproval. Failure to comply with any condition attached to this reproval may constitute cause for a separate disciplinary proceeding for willful breach of rule 1-110 of the State Bar Rules of Professional

Conduct. Respondent is ordered to comply with the following conditions attached to this reproof for **one year** (Reproof Conditions Period) following the effective date of the reproof.

- (1) **Review Rules of Professional Conduct:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.
- (2) **Comply with State Bar Act, Rules of Professional Conduct, and Reproof Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's reproof.
- (3) **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR within ten (10) days after such change, in the manner required by that office.
- (4) **Meet and Cooperate with Office of Probation:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 45 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the Reproof Conditions Period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's Reproof Conditions Period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with reproof conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) **Quarterly and Final Reports:**
 - a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the Reproof Conditions Period. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the Reproof Conditions Period and no later than the last day of the Reproof Conditions Period.

- b. Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
- c. Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
- d. Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after the Repeal Conditions Period has ended. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (7) **State Bar Ethics School:** Within one year after the effective date of the order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session.
- (8) **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because
- (9) **State Bar Client Trust Accounting School:** Within one year after the effective date of the order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session.
- (10) **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within _____ after the effective date of the order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete _____ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity.
- (11) **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the Repeal Conditions Period, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

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Substance Abuse Conditions

- a. **Abstinence:** Respondent must abstain from using alcoholic beverages and must not use or possess any illegal drugs or illegal drug paraphernalia. In each quarterly and final report, Respondent must report compliance with this condition.
- b. **Abstinence Program Meetings:** Respondent must attend a minimum of **two (2)** meetings per **month** of an abstinence-based self-help group approved by the Office of Probation. Programs that are not abstinence-based and allow the participant to continue consuming alcohol are not acceptable. Respondent must contact the Office of Probation and obtain written approval for the program Respondent wishes to select prior to receiving credit for compliance with this condition for attending meetings of such group. Respondent must provide to the Office of Probation satisfactory proof of attendance at such group meetings with each quarterly and final report; however, in providing such proof, Respondent may not sign as the verifier of such attendance.
- c. **Laboratory Testing:** Within 45 days after the effective date of the SELECT ONE order imposing discipline in this matter, Respondent must select a licensed medical laboratory or laboratories acceptable to the Office of Probation and having the capability to provide observed testing of Respondent as specified below. Respondent must provide a copy of this condition and of the Office of Probation Lab Test Information Sheet to each and every laboratory Respondent uses to perform any portion of the testing required to comply with this probation condition. In the event that Respondent subsequently is informed or learns that any laboratory, previously approved by the Office of Probation to conduct the testing set forth below, is no longer willing or able to perform such testing in the manner set forth below, Respondent must (1) notify the Office of Probation in writing of that fact within 72 hours after acquiring such information, and (2) select a new licensed medical laboratory, acceptable to the Office of Probation and capable of providing observed testing of Respondent as specified below, sufficiently promptly that Respondent will be able to continue to comply timely with the testing requirements set forth below.

After the expiration of the first 60 days of Respondent's probation/reproval, Respondent must be tested monthly, at Respondent's expense, during the first five (5) days of each remaining calendar month of Respondent's probation/reproval conditions period to show that Respondent has abstained from the use of alcohol and drugs. This testing will include an ethyl glucuronide (EtG) test and a ten-panel drug test (or equivalent tests accepted and approved in advance by the Office of Probation) and for drugs and other substances specified by the Office of Probation, including but not necessarily limited to alcohol, amphetamines, methamphetamines, barbiturates, benzodiazepines, cocaine metabolite, opiates, oxycodone, marijuana, methadone, and propoxyphene. These tests must be performed by the laboratory pursuant to United States Department of Transportation guidelines, and all testing must be observed. Respondent must comply with all laboratory requirements regarding specimen collection and the integrity of specimens.

In addition to the monthly testing, the Office of Probation may require Respondent to undergo up to additional tests per month, as described above, during the period of Respondent's probation/reproval conditions period, at times selected by the Office of Probation on a random basis. During the period of probation/reproval conditions period, Respondent must maintain with the Office of Probation a current telephone number and email address at which Respondent can be reached. Such tests are to be performed by the laboratory no later than eight (8) hours after the Office of Probation's email and telephone call to Respondent that the Office of Probation requires such additional testing.

For each test, Respondent must instruct the laboratory to provide a screening report directly to the Office of Probation, at Respondent's expense, that contains an analysis of the above tests, shows that each tested

sample was properly obtained, and demonstrates that the above testing requirements were satisfied. Failure to provide, or revocation of, such instruction for a particular required test may be deemed a failure to comply with this condition. Each screening report must be provided directly to the Office of Probation at or before the time that its results are disclosed to Respondent and within ten (10) days after the time that the tested sample is provided to the laboratory. Each report must record the date and time of the testing, list all of the substances for which Respondent was tested, and show the individual results for each such substance. An overall synopsis, e.g., "negative," with no specific breakdown, is not sufficient. In the event a previously selected and approved laboratory fails to provide the Office of Probation with test results or screening reports meeting the above requirements within two weeks of testing, the Office of Probation may require Respondent to choose a different licensed medical laboratory, approved by the Office of Probation, for future testing.

- d. **Medical Waivers:** Within 45 days after the effective date of the SELECT ONE order imposing discipline in this matter, Respondent must provide the Office of Probation with an authorization to disclose and obtain medical information (medical waiver) and access to all of Respondent's medical records related to Respondent's substance abuse problem for the period . Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, the Office of Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing, or adjudicating this probation/reproval condition.
- e. **Other: Laboratory Testing:** Within 20 days after the effective date of the State Bar Court order imposing discipline in this matter, Respondent must select a licensed medical laboratory or laboratories acceptable to the Office of Probation and having the capability to provide observed testing of Respondent as specified below. Respondent must provide a copy of this condition and of the Office of Probation Lab Test Information Sheet to each and every laboratory Respondent uses to perform any portion of the testing required to comply with this probation condition. In the event Respondent subsequently is informed or learns that any laboratory, previously approved by the Office of Probation to conduct the testing set forth below, is no longer willing or able to perform such testing in the manner set forth below, Respondent must (1) notify the Office of Probation in writing of that fact within 72 hours after acquiring such information, and (2) select a new licensed medical laboratory, acceptable to the Office of Probation and capable of providing observed testing of Respondent as specified below, sufficiently promptly that Respondent will be able to continue to comply timely with the testing requirements set forth below.

After the expiration of the first 30 days of Respondent's probation/reproval, Respondent must be tested monthly, at Respondent's expense, between the 10th and 15th day of each remaining calendar month of Respondent's probation/reproval conditions period to show that Respondent has abstained from the use of alcohol and drugs. This testing will include an ethyl glucuronide (EtG) test and a ten-panel drug test (or equivalent tests accepted and approved in advance by the Office of Probation) and for drugs and other substances specified by the Office of Probation, including, but not necessarily limited to alcohol, amphetamines, methamphetamines, barbiturates, benzodiazepines, cocaine metabolite, opiates, oxycodone, marijuana, methadone, and propoxyphene. These tests must be performed by the laboratory pursuant to United States Department of Transportation guidelines, and all testing must be observed. Respondent must comply with all laboratory requirements regarding specimen collection and the integrity of specimens.

In addition to the monthly testing, the Office of Probation may require Respondent to undergo up to two (2) additional tests per month, as described above, during the period of Respondent's probation/reproval conditions period, at times selected by the Office of Probation on a random basis. During the period of probation/reproval conditions period, Respondent must maintain with the Office of Probation a current telephone number and email address at which Respondent can be reached. Such tests are to be performed by the laboratory no later than eight (8) hours after the Office of Probation's email and telephone call to Respondent that the Office of Probation requires such additional testing.

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For each test, Respondent must instruct the laboratory to provide a screening report directly to the Office of Probation, at Respondent's expense, that contains an analysis of the above tests, shows that each tested sample was properly obtained, and demonstrates that the above testing requirements were satisfied. Failure to provide, or revocation of, such instruction for a particular required test may be deemed a failure to comply with this condition. Each screening report must be provided directly to the Office of Probation at or before the time that its results are disclosed to Respondent and within ten (10) days after the time that the tested sample is provided to the laboratory. Each report must record the date and time of the testing, list all of the substances for which Respondent was tested, and show the individual results for each such substance. An overall synopsis, e.g. "negative," with no specific breakdown, is not sufficient. In the event a previously selected and approved laboratory fails to provide the Office of Probation with test results or screening reports meeting the above requirements within two weeks of testing, the Office of Probation may require Respondent to choose a different licensed medical laboratory, approved by the Office of Probation, for future testing.

8. The detectives found approximately 2.07 grams of Ketamine in the vials, 18 tablets of Ecstasy and five capsules of Molly (MDMA-Ecstasy) on respondent. The detectives tested an Ecstasy tablet in the field, which tested positive for MDMA/Methamphetamine.

9. When the detectives took respondent's statement, respondent explained that at times, a "friend" would give him ecstasy, and that he would share the ecstasy with his friends. Respondent told the detective that he was planning to "party" with his friends that evening. Respondent said a hit of Ketamine would give respondent a "high" for approximately 30 minutes and one dose of Ecstasy or MDMA would give him a "high" that would last approximately one hour.

CONCLUSION OF LAW:

10. The facts and circumstances surrounding the above-described violation do not involve moral turpitude but do involve other misconduct warranting discipline.

AGGRAVATING CIRCUMSTANCES.

None.

MITIGATING CIRCUMSTANCES

Good Character (Std. 1.6(f)): The State Bar has received nine letters attesting to respondent's good character from a wide range of references in both the legal and general communities, whose authors show they are aware of the full extent of respondent's misconduct. The letters are from colleagues, former co-counsel and personal friends who have known respondent anywhere from two to 18 years and have attested to their belief in his good character and his ability as an attorney.

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged his misconduct and is entitled to mitigation for saving the State Bar significant resources and time. (*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].)

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 Silverton* (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).)

A record of conviction shall be conclusive evidence of guilt of the crime which he or she has been convicted. (Bus. & Prof. Code, §6101(a).) Thus, respondent’s conviction of Health & Safety Code section 11377(a) [Possession of a Controlled Substance] is conclusive proof of the elements of the crime. Because conviction under Health & Safety Code section 11377(a) is not a crime of moral turpitude *per se*, an examination of the facts and circumstances is necessary to determine whether respondent’s criminal misconduct involved moral turpitude. Here, the facts and circumstances surrounding respondent’s misconduct do not demonstrate by clear and convincing evidence respondent’s intent to sell the controlled substances in his possession. Respondent was candid with the law enforcement agents about the nature of the substances in his possession, and the facts and circumstances surrounding respondent’s conviction do not otherwise involved dishonesty or corruption. Therefore, respondent’s misconduct does not rise to the level of moral turpitude.

Attorneys may also be disciplined for “other misconduct warranting discipline” for misconduct not amounting to moral turpitude as an exercise of the California Supreme Court’s inherent power to control the practice of law to protect the profession and the public. (*In re Kelley* (1990) 52 Cal. 3d 487, 494.) Suspension or reproof is the presumed sanction for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline. (Std. 2.16(b).)

To determine the appropriate level of discipline, consideration must be given to the aggravating and mitigating circumstances. In mitigation, respondent has presented nine letters attesting to respondent’s good character and has voluntarily entered into this stipulation. There are no aggravating circumstances present.

Respondent was convicted of one count of possession of controlled substances. This misconduct does not involve the practice of law and there was no harm to his clients or the public. Therefore, discipline at the low end of the range discussed in standard 2.16(b) is sufficient to achieve the purposes of discipline expressed in standard 1.1, including protection of the public. Accordingly, imposition of public reproof is appropriate in this matter.

Case law supports this level of discipline. After performing appropriate research, the parties were unable to locate any published California discipline cases involving a single conviction for possession of illegal substances. However, the cases *In re Nadrich* (1988) 44 Cal.3d 271 and *In re Leardo* (1991) 53 Cal.3d 1 are instructive in that they involve drug-related convictions, where discipline less than disbarment was deemed the appropriate discipline.

Nadrich arranged for at least two sales of LSD totaling \$64,000, and pled guilty to possession of a controlled substance with intent to distribute it and using interstate commerce to distribute a controlled substance. (*In re Nadrich, supra*, at 274.) The court found many mitigating factors, including that Nadrich withdrew from the active practice of law prior to committing the criminal acts, that his offenses were unrelated to his practice of law, that Nadrich's addiction was the result of legitimate medical treatment, and he did not sell drugs out of a desire for personal enrichment. (*Id.* at 276.) Given his extensive mitigation, the court imposed discipline of a five-year stayed suspension, a one-year actual suspension, and a five-year probation. (*Id.* at 279.)

Leardo made several sales of heroin and cocaine to an undercover agent, and pled guilty to two counts of possession of controlled substances with intent to distribute. (*In re Leardo, supra*, at 5-6.) In discussing the appropriate discipline, the court found that Leardo's crime involved moral turpitude. (*Id.* at 10.) The court found that Leardo showed both mitigation and rehabilitation, as he had been drug-free since his arrest four years earlier. (*Ibid.*) The parties stipulated that there was no client harm, no financial profit, and that Leardo was cooperative and candid. (*Id.* at 8.) Unlike Nadrich's numerous transactions over a two-year period, Leardo sold only a small quantity of drugs to a single buyer over a period of two months. (*Id.* at 17.) Furthermore, Leardo had already spent four and a half years on interim suspension. (*Id.* at 18.) Given this extensive mitigation, the court imposed discipline consisting of a five-year stayed suspension, with five years of probation. (*Id.* at 18.)

The facts and circumstances of respondent's crime are not as severe as those committed by Leardo and Nadrich, both of which involved moral turpitude and convictions for intent to distribute as opposed to possession. Additionally, respondent presented evidence of good character and has cooperated with the State Bar throughout the process. Therefore, a public reproof is appropriate to achieve the purposes of discipline and protect the public.

COSTS OF DISCIPLINARY PROCEEDINGS.



Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of August 27, 2018, the discipline costs in this matter are \$2,699. 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.

(Do not write above this line.)

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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.

<u>9/6/18</u> Date	 Respondent's Signature	<u>Joseph John Nazarian</u> Print Name
<u>9/6/2018</u> Date	 Respondent's Counsel Signature	<u>Scott Hughes</u> Print Name
<u>9/13/18</u> Date	<u>Ch Mitchell</u> Deputy Trial Counsel's Signature	<u>Christina Mitchell</u> Print Name

(Do not write above this line.)

In the Matter of:
JOSEPH JOHN NAZARIAN

Case Number(s):
17-C-07643-YDR

REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reprovai, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

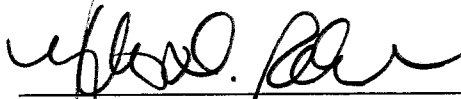
- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

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

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

October 5, 2018

Date



YVETTE D. ROLAND
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 Court Specialist 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 9, 2018, 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:

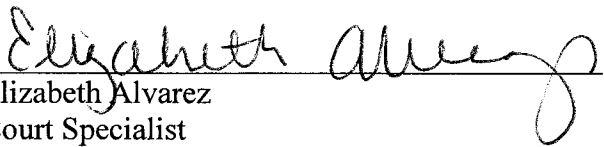
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SCOTT D. HUGHES
620 NEWPORT CENTER DR STE 1100
NEWPORT BEACH, CA 92660

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

Christina R. Mitchell, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 9, 2018.


Elizabeth Alvarez
Court Specialist
State Bar Court