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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
<b>Counsel for the State Bar</b>  Rachel S. Grunberg Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2443  Bar # 197080	<b>Case Number(s):</b> 17-O-04441-LMA	<b>For Court use only</b>  <b>PUBLIC MATTER</b>  <b>FILED</b> <i>MS</i>  NOV 15 2018  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<b>In Pro Per Respondent</b>  Brian Joseph Baker 262 N Glenn Avenue Fresno, CA 93701-1819 (805) 319-5553  Bar # 257228	<b>kwiktag</b> ® 241 070 463 	<b>Submitted to: Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED
<b>In the Matter of:</b> <b>BRIAN JOSEPH BAKER</b>  Bar # 257228  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 **August 1, 2008**.
- (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 **20** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

(Effective July 1, 2018)

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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. It is recommended that (check one option only):
- 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. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.
  - 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.

**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: **13-H-13579; 14-C-03434. See page 17 and Exhibit 1, 35 pages. Exhibit 1 is a certified copy of the prior records of discipline.**
  - (b)  Date prior discipline effective: **October 23, 2015**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code sections 6101 and 6102, Rule 9.10 of the California Rules of Court, and Rule 1-100 of the Rules of Professional Conduct**
  - (d)  Degree of prior discipline: **90-day actual suspension**
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.

State Bar Court case # of prior case: 11-C-19478. See page 17 and Exhibit 1, 35 pages. Exhibit 1 is a certified copy of the prior records of discipline.

Date prior discipline effective: May 31, 2012

Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code sections 6101 and 6102, and Rule 9.10 of the California Rules of Court

Degree of prior discipline: Public Reprimand

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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. **See page 17.**
- (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 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 Respondent's misconduct.

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- (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.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**Pretrial Stipulation. See page 17.**

**Extreme Emotional Difficulties. See pages 17-18.**

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

- (1)  **Actual Suspension:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for the first \_\_\_\_\_ of the period of Respondent's probation.

- (2)  **Actual Suspension "And Until" Rehabilitation:**

Respondent is suspended from the practice of law for **three years**, the execution of that suspension is stayed, and Respondent is placed on probation for **three years** with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first **two years** of Respondent's probation and until Respondent provides proof to the State Bar Court of Respondent's

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rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(3)  **Actual Suspension "And Until" Restitution (Single Payee) and Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
  - a. Respondent makes restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
  - b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(4)  **Actual Suspension "And Until" Restitution (Multiple Payees) and Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
  - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(5)  **Actual Suspension "And Until" Restitution (Single Payee) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

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- Respondent must be suspended from the practice of law for a minimum for the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:
  - a. Respondent makes restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and,
  - b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(6)  **Actual Suspension "And Until" Restitution (Multiple Payees) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:
  - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(7)  **Actual Suspension with Credit for Interim Suspension:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent is suspended from the practice of law for the first \_\_\_\_\_ of probation (with credit given for the period of interim suspension which commenced on \_\_\_\_\_).

## E. Additional Conditions of Probation:

- (1)  **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court 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 Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3)  **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court 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 15 days after the effective date of the Supreme Court 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 30 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 probation 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 probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation 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 period of probation. 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 probation period and no later than the last day of the probation 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

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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 either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. 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 Supreme Court 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. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (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 Supreme Court 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. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (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 Supreme Court 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. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (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



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with it. If, at any time before or during the period of probation, 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.

- (12)  **Minimum Continuing Legal Education (MCLE):** Within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete \_\_\_\_\_ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in **SELECT ONE** \_\_\_\_\_ and must 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. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (13)  **Other:** Respondent must also comply with the following additional conditions of probation:
- (14)  **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (15)  **The following conditions are attached hereto and incorporated:**
- Financial Conditions  Medical Conditions
- Substance Abuse Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

#### F. Other Requirements Negotiated by the Parties (Not Probation Conditions):

- (1)  **Multistate Professional Responsibility Examination Within One Year or During Period of Actual Suspension:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Respondent's actual suspension, whichever is longer, and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2)  **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because \_\_\_\_\_

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- (3)  **California Rules of Court, Rule 9.20:** Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Atheam v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (4)  **California Rules of Court, Rule 9.20 – Conditional Requirement:** If Respondent remains suspended for 90 days or longer, Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Atheam v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (5)  **California Rules of Court, Rule 9.20, Requirement Not Recommended:** It is not recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, because

- (6)  **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

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In the Matter of: <b>Brian Joseph Baker</b>	Case Number(s): <b>17-O-04441-LMA</b>
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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 **8 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 Supreme 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 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 3 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

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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 Supreme Court 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 of **his probation**. 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:**

(Do not write above this line.)

In the Matter of: <b>Brian Joseph Baker</b>	Case Number(s): <b>17-O-04441-LMA</b>
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### Medical Conditions

- a.  **Mental Health Conditions:** Respondent must obtain psychiatric or psychological counseling or treatment to address mental health issue(s), at Respondent's own expense, from a duly licensed psychiatrist, psychologist, clinical social worker, or marriage and family therapist (mental health professional), and must provide such licensed individual with a copy of this stipulation. However, if such mental health professional determines at any time that no additional counseling or treatment is necessary, Respondent may furnish a written statement from the mental health professional to that effect to the Office of Probation. Respondent must commence counseling or treatment no later than 30 days after the effective date of the Supreme Court order imposing discipline in this proceeding and must comply with any counseling or treatment plan developed by the mental health professional. Respondent must certify under penalty of perjury in each quarterly report and in the final report that Respondent has obtained and complied with such psychiatric or psychological counseling or treatment plan during the period covered by such report. Within 60 days of written notice from the Office of Probation, Respondent must provide satisfactory evidence of such compliance to the Office of Probation. The Office of Probation may require that such satisfactory evidence be a letter from the mental health professional on such individual's letterhead, or on a form approved by the Office of Probation, that Respondent has obtained such psychiatric or psychological counseling or treatment and that Respondent has complied with a counseling or treatment plan during the period specified in the written notice.
- b.  **Medical Waivers:** Within 45 days after the effective date of the Supreme Court 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 mental health issue(s) for the period of his probation. 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.
- c.  **Other:**

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

IN THE MATTER OF:                      BRIAN JOSEPH BAKER

CASE NUMBER:                          17-O-04441-LMA

**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. 17-O-04441-LMA (State Bar Investigation)

FACTS:

1. On May 7, 2015, respondent entered into a Stipulation re: Facts, Conclusions of Law, and Disposition (“Stipulation”) with the State Bar of California in case numbers 13-H-13579 and 14-C-03434, wherein respondent stipulated, inter alia, to the following terms and conditions of probation requiring him to:
  - a. Submit written Quarterly Reports to Probation on each January 10, April 10, July 10, and October 10 of the probation period, certifying under penalty of perjury whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of probation;
  - b. Provide Probation satisfactory proof of attendance at a session of Ethics School, and passage of the test given at the end of that session within one year of the effective date of discipline;
  - c. Comply with all conditions of probation imposed in the underlying criminal matter (“UCM”) and so declare under penalty of perjury on any Quarterly Report filed with Probation; and
  - d. Comply with Substance Abuse Conditions, including that respondent:
    - i. abstain from use of any alcoholic beverages and not use or possess prohibited drugs;
    - ii. attend at least eight abstinence-based, self-help meetings per month during the probation period and provide Probation satisfactory proof of attendance during each month, on or before the 10th day of the following month; and
    - iii. submit to random laboratory alcohol- and drug-testing, as directed by Probation, no less than 12 times per year.
2. On May 8, 2015, the State Bar Court Hearing Department issued an Order Approving the Stipulation as Modified. In pertinent part, the Substance Abuse Condition regarding laboratory testing was modified to provide: “Respondent will be randomly tested a minimum of six times during the probation period, but no more than 12 times.”
3. On September 23, 2015, the California Supreme Court filed Order Number S227493 (State Bar Court Case Nos. 13-H-13579 and 14-C-03434), and ordered that respondent be suspended for

- two years, that execution of that period of suspension be stayed, and that respondent be placed on probation for two years subject to the following conditions:
- a. Respondent be actually suspended for 90 days and until respondent takes and passes the MPRE and provides satisfactory proof of such passage to Probation; and
  - b. Respondent must comply with the other conditions of probation recommended by the State Bar Court Hearing Department in its Order filed on May 8, 2015.
4. On October 27, 2015, Probation sent respondent a letter outlining the terms and conditions of his probation. The letter specifically reminded respondent of his obligations, his reporting schedule and requirements, and consequences for non-compliance. Enclosed with the letter were, among other things, copies of the California Supreme Court Order and conditions of probation; a Quarterly Report with instructions; a Self-Help Meetings Attendance Log ("Meetings Report"); lab testing information; and the Ethics School schedule and enrollment form. Respondent received the letter.
  5. On November 10, 2015, Probation Deputy Maricruz Farfan ("Farfan") and respondent had a telephonic meeting to discuss the terms and conditions of his probation, his reporting schedule and requirements, and the consequences of noncompliance. After the telephonic meeting, Farfan summarized the content of the meeting in a Probation Meeting Record and emailed respondent a copy on November 12, 2015, which respondent received.
  6. On December 6, 2015, respondent submitted his Meetings Report due to Probation on December 10, 2015. On January 8, 2016, Farfan emailed respondent a notice of non-compliance stating that respondent was required to attend eight self-help meetings in November 2015, and the log showed he attended six meetings in November and two in December. Respondent received the email. On January 8, 2016, respondent submitted a corrected, but untimely, Meetings Report.
  7. On October 31, 2016, Farfan emailed respondent a notice of non-compliance stating that respondent had failed to submit proof of his attendance at Ethics School by October 23, 2016. Respondent received the email. Respondent did not submit proof of his attendance at Ethics School until November 30, 2016.
  8. Respondent failed to timely submit his Meetings Report due to Probation on February 10, 2017. Respondent submitted his Meetings Report on February 14, 2017.
  9. On March 29, 2017, Farfan called respondent at 7:59 a.m. and left him a voice message instructing him to submit to lab testing that day. Farfan memorialized the telephone communication in an email sent to respondent at 8:01 a.m. Respondent received the telephone communication and the email. Respondent failed to submit to lab testing that day.
  10. On April 10, 2017, Farfan received a voice mail message from respondent that he was hospitalized for five days for bipolar disorder and he did not have access to his documents. He asked if he could receive a grace period to comply with his reporting requirements.
  11. On April 14, 2017, Farfan emailed, mailed, and uploaded a non-compliance letter to respondent's State Bar private member profile stating that respondent failed to submit to lab testing on March 29, 2017, and failed to submit his Quarterly Report, Meetings Report, and UCM compliance report due to Probation on April 10, 2017. Farfan acknowledged respondent's

April 10, 2017 email, but stated that the Office of Probation did not have authority to extend compliance due dates or modify the terms and conditions of probation. Respondent received the letter.

12. On April 20, 2017, respondent untimely submitted his Quarterly Report and Meetings Report, which had been due to Probation on April 10, 2017. Respondent failed to submit his UCM compliance report with his Quarterly Report, but did self-report that he had "relapsed on alcohol for a period of two days" during the quarter. On April 27, 2017, Farfan emailed respondent a notice of non-compliance stating, among other things, that his Meetings Report failed to include meeting dates, that his report of alcohol relapse meant he was in violation of his abstinence condition, and that the UCM compliance report was still outstanding. Respondent received the email. On April 28, 2017, respondent submitted a corrected, but untimely, Meetings Report.
13. On April 28, 2017, Farfan received an email from respondent stating that he was homeless and that was doing the best he could to remain compliant with his reporting requirements.
14. Respondent failed to submit his UCM compliance report due to Probation on April 10, 2017. To date, respondent has failed to submit this report to Probation.
15. On May 3, 2017, Farfan called respondent at 8:12 a.m. and left a voice mail message instructing him to submit to lab testing that day. Farfan memorialized the telephone communication in an email sent to respondent at 8:20 a.m. Respondent received the telephone communication and the email. Respondent responded to Farfan's email at 9:42 a.m. He stated that he was homeless and without money or identification. He stated that he called the lab testing facility and they indicated they would not test him without identification, but that an employer representative could intervene on his behalf. He asked Farfan if Probation could help and intervene as an employer representative with the lab. Respondent failed to submit to lab testing that day. On May 4, 2017, Farfan responded to respondent's email from the prior day and indicated that Probation was not an employer representative and could not "intervene." Respondent received the email.
16. Respondent failed to timely submit his Meetings Report due to Probation on June 10, 2017. Respondent submitted his Meetings Report on June 14, 2017.
17. Communication between Probation and respondent ceased in July 2017. Thereafter, respondent failed to submit his Meeting Reports due to Probation on July 10, August 10, September 10, and October 10, 2017. Respondent failed to submit his Quarterly Reports due to Probation on July 10 and October 10, 2017. Respondent failed to submit his UCM compliance reports due to Probation on July 10, October 10, and October 23, 2017. Respondent failed to submit his Final Report due to Probation on October 23, 2017. To date, respondent has failed to submit any of these reports to Probation.

#### CONCLUSIONS OF LAW:

18. By failing to abstain from using alcohol during his probation period, by failing to submit to laboratory testing on two occasions, by failing to timely submit four Meetings Reports, by failing to timely submit one Quarterly Report, by failing to timely submit proof of attendance at Ethics School, by failing to submit four Meetings Reports, by failing to submit four UCM compliance



reports, by failing to submit two Quarterly Reports, and by failing to submit a Final Report, respondent failed to comply with all conditions attached to his disciplinary probation, in willful violation of Business and Professions Code section 6068(k).

#### **AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline (Std. 1.5(a)):** Respondent has two prior records of discipline. In his most recent matter (State Bar Court case numbers 13-H-13579 and 14-C-03434) respondent was actually suspended for 90 days, effective October 23, 2015. In case number 13-H-13579, respondent stipulated to failing to comply with reproof conditions attached to his prior discipline in violation of rule 1-110 of the Rules of Professional Conduct. Specifically, respondent stipulated to failing to submit four Meetings Reports, a UCM compliance report, proof of attendance at Ethics School, and proof of passage of the MPRE, and failing to timely submit five Meetings Reports, three Quarterly Reports, two UCM compliance reports, and his Final Report. In aggravation, respondent had a prior record of discipline and multiple acts of misconduct. In mitigation, respondent was given credit for entering into a pretrial stipulation. In case number 14-C-03434, respondent stipulated to misconduct warranting discipline for a May 20, 2014 conviction, for violating Vehicle Code section 23152(b) [driving a vehicle with a blood alcohol level of .08 percent or more with a prior].

In State Bar Court case number 11-C-19478, respondent was publically reproofed, effective May 31, 2012. He stipulated to misconduct warranting discipline for violating Vehicle Code section 23152(b) [driving a vehicle with a blood alcohol level of .08 percent or more with a prior]. Respondent previously suffered a conviction on October 30, 2000, for violating Vehicle Code section 23152(a) [driving under the influence of alcohol]. At the time of respondent's arrest he was suffering from an alcohol relapse which he subsequently took steps to address. In aggravation, respondent admitted that he harmed the public and the administration of justice. In mitigation, respondent was given credit for entering into a pretrial stipulation and demonstrating rehabilitation from alcoholism by spending eight months at a sober living facility and becoming more active in AA.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent's numerous probation violations represent multiple acts of wrongdoing.

#### **MITIGATING CIRCUMSTANCES.**

**Pretrial Stipulation:** By entering into this pretrial stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and 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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

**Extreme Emotional Difficulties:** Respondent and his wife divorced in March 2016. Respondent's wife was granted full custody of the children. Respondent suffered severe emotional and mental distress during this time due to the dissolution of his marriage, the custody arrangement, and his displacement from the family home. He became despondent, destitute, and, at times, homeless. Respondent relapsed into alcohol use for a period of two days, which he self-reported to the State Bar. He also suffered severe mood disorder, depression, anxiety, catastrophic thinking, and frequent suicidal ideation and attempts. Respondent sought psychiatric care in May 2016. According to his treating

physician, respondent was so severely impaired by his mental illness from February through December 2017 that he was able to perform little more than the basic activities of daily living, namely eating, marginal dressing and grooming, bathing, toileting, and ambulation. He was unable to perform most instrumental activities, such as manage his finances, acquire safe housing, arrange for transportation, schedule or keep appointments, manage shopping and meal preparation, or perform house cleaning and maintenance, which correlates to his failure to successfully complete his disciplinary probation. Since February 2017, and continuing through the present, respondent has been receiving regular psychiatric treatment with medication management, and, for the past year, individual psychotherapy. His physician states that he has recently shown significant improvement. (See *In the Matter of Lawrence* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239, 246-247.)

#### **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 high professional standards; and preservation of public confidence in the legal profession. (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 discipline 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.)

Standard 2.14 applies to violations of probation and provides: “Actual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition and the member’s unwillingness or inability to comply with disciplinary orders.” However, standard 1.8(b) instructs that “[i]f a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most completing mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct: (1) Actual suspension was ordered in any one of the prior disciplinary matters; (2) The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or (3) The prior disciplinary matters with the current record demonstrate the attorney’s unwillingness or inability to conform to ethical responsibilities.”

Here, respondent has two prior records of discipline, one of which involved actual suspension. Nevertheless, a departure from standard 1.8(b) is warranted. Respondent’s prior disciplinary matters involved convictions for driving under the influence of alcohol and a violation of State Bar disciplinary conditions. While his current misconduct also involves a violation of disciplinary conditions, where he failed to comply with multiple terms of his probation, there is no evidence of client harm, evil intent, or

bad faith. Notably, respondent's past and present transgressions do not involve the practice of law. Although serious, it is clear that respondent's misconduct stems from severe mental health and alcohol problems, which he self-reported to the State Bar during his probation lapses. This is not a situation where respondent attempted to simply evade his probation requirements. Respondent recognizes his issues, is receiving regular psychiatric care, and is demonstrating steady improvement from the severity of the illnesses that contributed to his misconduct. This, combined with his cooperation and candor in entering into this pretrial stipulation, demonstrates compelling mitigation that militates against disbarment. Under these circumstances, and with the requirement that respondent attend ongoing mental health and alcohol abuse treatment, a two-year actual suspension that remains in effect until he proves rehabilitation, fitness, and ability to practice law is an appropriate and significant disciplinary that will serve to protect the public and the profession. (See *In the Matter of Lawrence, supra*, 5 Cal. State Bar Ct. Rptr. 239, 246–248 [three-year actual suspension recommended for attorney with three prior disciplines; departure from disbarment under former std. 1.7(b) warranted given lack of client harm, evil intent, or bad faith and in light of attorney's compelling mitigation for extreme physical disabilities that caused or contributed to the misconduct].)

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

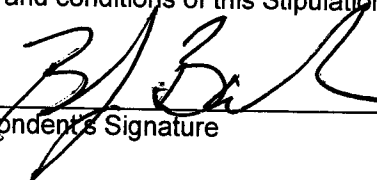
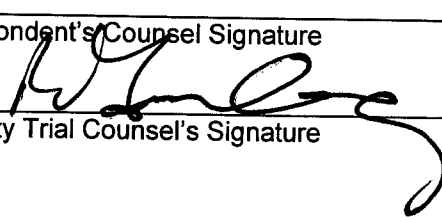
Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of October 17, 2018, the discipline costs in this matter are \$3,857. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: Brian Joseph Baker	Case Number(s): 17-O-04441-LMA
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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>10/23/18</u> Date	 Respondent's Signature	<u>Brian Joseph Baker</u> Print Name
<u>10/29/18</u> Date	 Deputy Trial Counsel's Signature	<u>Rachel S. Grunberg</u> Print Name

(Do not write above this line.)

In the Matter of: Brian Joseph Baker	Case Number(s): 17-O-04441
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### ACTUAL 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.

On page 1 of the Stipulation, in the caption, after case number "17-O-04441", "-LMA" is deleted.

On page 14 of the Stipulation, after case number "17-O-04441", "-LMA" is deleted.

On page 20 of the Stipulation, in the caption, after case number "17-O-04441", "-LMA" is deleted.

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).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order.** (See Cal. Rules of Court, rule 9.18(a).)

11/15/18  
Date

  
MANJARI CHAWLA  
Judge of the State Bar Court

SEP 23 2015

Frank A. McGuire Clerk

Deputy

(State Bar Court Nos. 13-H-13579; 14-C-03434)

S227493

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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In re BRIAN JOSEPH BAKER on Discipline

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The court orders that Brian Joseph Baker, State Bar Number 257228, is suspended from the practice of law in California for two years, execution of that period of suspension is stayed, and he is placed on probation for two years subject to the following conditions:

1. Brian Joseph Baker is suspended from the practice of law for a minimum of the first ninety days of probation, and he will remain suspended until the following conditions are satisfied:
  - i. He takes and pass the Multistate Professional Responsibility Examination and provides satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles; and
  - ii. If he remains suspended for two years or more as a result of not satisfying the preceding condition, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
2. Brian Joseph Baker must also comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on May 8, 2015.
3. At the expiration of the period of probation, if Brian Joseph Baker has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

**EXHIBIT**

tabbles  
1

Brian Joseph Baker must also take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order, or during the period of his suspension, whichever is longer and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

Brian Joseph Baker must also comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order. Failure to do so may result in disbarment or suspension.

Costs are 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. One-third of the costs must be paid with his membership fees for each of the years 2016, 2017, and 2018. If Brian Joseph Baker 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.

I, Frank A. McGuire, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

\_\_\_\_ day of SEP 23 2015 \_\_\_\_ 20\_\_\_\_  
Clerk

By:   
Deputy

CANTIL-SAKAUYE  
Chief Justice

(Do not write above this line.)

**ORIGINAL**

**State Bar Court of California  
Hearing Department  
Los Angeles  
ACTUAL SUSPENSION**

**PUBLIC MATTER**

<p>Counsel For The State Bar</p> <p><b>Sue Hong</b> Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1161</p> <p>Bar # 285852</p>	<p>Case Number(s): 13-H-13579-DFM 14-C-3434</p>	<p>For Court use only</p> <p><b>FILED</b> MAY 08 2015 <i>P.B.</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p><b>Susan Margolis</b> Margolis &amp; Margolis LLP 2000 Riverside Dr Los Angeles, CA 90039 (323) 953-8996</p> <p>Bar # 104629</p>	<p>Submitted to: <b>Assigned Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: <b>BRIAN JOSEPH BAKER</b></p> <p>Bar # 257228</p> <p>A Member of the State Bar of California (Respondent)</p>	<p><b>ACTUAL SUSPENSION</b></p> <p><input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 **August 1, 2008**.
- (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 **16** 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."

*W.K.*



(Do not write above this line.)

- (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):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **three billing cycles following the effective date of the Supreme Court order.** (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(f) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline**
- (a)  State Bar Court case # of prior case **11-C-19478**
  - (b)  Date prior discipline effective **May 31, 2012**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **One count of Vehicle Code section 23152(b)[Driving a Vehicle with a blood-alcohol level of 0.08% or more with a prior].**
  - (d)  Degree of prior discipline **Public Reproval**
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (2)  **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(Do not write above this line.)

- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Attachment at Page 10.**
- (8)  **Restitution:** Respondent failed to make restitution.
- (9)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(g) & 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 deemed serious.
- (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 and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted with a good faith belief that was honestly held and 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.
- (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.

(Do not write above this line.)

(12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**Pre-trial stipulation: See Attachment at Page10.**

**D. Discipline:**

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of **two years**.

i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the 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:

(b)  The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent must be placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3)  **Actual Suspension:**

(a)  Respondent must be actually suspended from the practice of law in the State of California for a period of **90 days**.

i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the 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: **Respondent takes and passes the Multistate Professional Responsibility Examination ("MPRE") as indicated below under section F.(I)..**

**E. Additional Conditions of Probation:**

(1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.

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

(Effective January 1, 2014)

(Do not write above this line.)

- (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 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.
- (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 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.

- (6)  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.
- (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 probation conditions.
- (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:
- (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)  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 during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without**

(Effective January 1, 2014)

(Do not write above this line.)

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:

Provision by respondent of proof of passage of the MPRE to the Office of Probation within six months prior to the effective date of the discipline herein shall be deemed to satisfy this MPRE requirement.

- (2)  **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5)  **Other Conditions: See Substance Abuse Conditions on Page 7.**

In the Matter of:	Case Number(s):
BRIAN JOSEPH BAKER	13-H-13579, 14-C-03434-DFM

**SUBSTANCE ABUSE CONDITIONS**

a. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.

b. Respondent must attend at least eight (8) meetings per month of:

Any abstinence-based self-help group of Respondent's own choosing, including *inter alia*, Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T., S.O.S., etc. Other self-help maintenance programs are acceptable if they include : (i) a subculture to support recovery (meetings); and (ii) a process of personal development that does not have financial barriers. (See *O'Conner v. Calif.* (C.D. Calif. 1994) 855 F. Supp. 303 [No first amendment violation where probationer given choice between AA and secular program.]) The program called "Moderation Management" is not acceptable because it allows the participant to continue consuming alcohol. Before Respondent attends the first self-help group meeting, Respondent must contact the Office of Probation and obtain approval for the program Respondent selected. If Respondent wants to change groups, Respondent must obtain the Office of Probation's approval prior to attending a meeting with the new self-help group.

As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period. Respondent cannot sign as the verifier of Respondent's proof of attendance.

c. Respondent must select a licensed medical laboratory or its licensed collection facility which conducts testing pursuant to Department of Transportation guidelines. Respondent must furnish to the laboratory blood and/or urine samples as may be required by the Office of Probation to show that Respondent has abstained from alcohol and drugs. Specifically, Respondent must be tested for a 10-panel (consisting of (1) Amphetamines; (2) Methamphetamines; (3) Barbiturates; (4) Benzodiazepines; (5) Cocaine Metabolite; (6) Opiates; (7) Oxycodone; (8) Marijuana; (9) Methadone; and (10) Propoxyphene) and for alcohol with an Ethyl Glucuronide ("EtG") test. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. The sample must be collected under direct observation by the licensed medical laboratory or its licensed collection facility.

Respondent must cause the laboratory to test the first portion of each sample to be tested, and cause the second portion of the specimen to be stored in a manner which will ensure that the

specimen may be accurately tested in the future. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report containing an analysis of Respondent's blood and/or urine including cut off values and stating that the collection of the specimen was observed. In the event that a test result was positive, and Respondent believes this result to be a false or "innocent" positive, Respondent will be given up to 5 days to have the second specimen re-tested at the original laboratory or at another approved laboratory, and/or to meet with a Medical Review Officer employed or approved by the laboratory to discuss the results. If the laboratory determines that the initial positive test was indeed a false or "innocent" positive, that determination will be accepted by the Office of Probation.

Random Testing: Respondent shall be randomly tested no less than 12 times per year.

Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within six (6) hours.

Within twenty-four (24) hours of the Office of Probation's initial call to Respondent, Respondent must furnish to the licensed medical laboratory or its licensed collection facility the required blood and/or urine samples. For good cause, the Office of Probation may require Respondent to deliver an additional specimen (not to be counted towards the number of random testings set forth above) of Respondent's urine and/or blood. Respondent will be notified by phone, and the testing must occur no later than twenty-four (24) hours after that call.

d. Within thirty (30) days from the effective date of discipline, Respondent must provide the Office of Probation with medical waivers. Respondent must provide the Office of Probation and access to all of Respondent's medical records. 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, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

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

IN THE MATTER OF:                    BRIAN BAKER  
CASE NUMBER:                        13-H-13579; 14-C-3434-DFM

**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. 13-H-13579 (Reproval Violation)**

1. On April 23, 2012, respondent entered into a Stipulation Re Facts, Conclusions of Law and Disposition ("Stipulation") with the State Bar of California, in Case No. 11-C-19478.
2. On May 10, 2012, the Hearing Department of the State Bar Court filed an Order Approving the Stipulation and imposing upon respondent a public reproval with conditions attached for a period of one year.
3. On May 10, 2012, the Hearing Department's May 7, 2012, Order Approving the Stipulation for a Public Reproval was properly served by mail upon the respondent. Respondent received the Order.
4. The public reproval became effective on May 31, 2012.
5. Pursuant to the public reproval, respondent was ordered to comply with the following terms and conditions of probation, among others:
  - a. to comply with the State Bar Act and the Rules of Professional Conduct during the period of probation;
  - b. to submit to the Office of Probation written quarterly reports each January 10, April 10, July 10, and October 10 of each year or part thereof during the reproval period, certifying under penalty of perjury whether he has complied with all provisions of the State Bar Act and the Rules of Professional Conduct and all terms of the reproval during the preceding calendar quarter or part thereof covered by the report, and to file a final report no earlier than twenty (20) days prior to the expiration of the reproval period and no later than the last day of said period, including whether there are any proceedings pending against him or her in the State Bar Court;
  - c. to contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation within thirty (30) days from the effective date of discipline.
  - d. to provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), to the Office of Probation within one year of the effective date of the reproval.



- e. to provide 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 to the State Bar's Office of Probation within one year after the effective date of discipline.
- f. to comply with Substance Abuse Conditions.

6. On June 1, 2012, a Probation Deputy from the Office of Probation of the State Bar of California sent a letter to respondent. In the letter, the Probation Deputy reminded respondent of the terms and conditions of his probation imposed pursuant to the Public Reprimand. In the June 1, 2012, letter, the Probation Deputy specifically reminded Respondent regarding his obligations to submit quarterly probation reports, with the first due on July 10, 2012. Enclosed with the June 1, 2012, letter were, among other things, copies of the relevant portions of the Public Reprimand setting forth the conditions of the respondent's probation, an Alcoholics Anonymous ("AA") Attendance Form, a Quarterly Report Instruction sheet, and a Quarterly Report form specially tailored for respondent to use in submitting his quarterly reports. Respondent received the June 1, 2012, letter.

7. Respondent failed to submit to the Office of Probation, AA meeting reports due on September 10, 2012, October 10, 2012, and November 2012.

8. Respondent failed to report to the Office of Probation, Underlying Criminal Matter ("UCM") Compliance due on October 10, 2012.

9. Respondent failed to submit to the Office of Probation, the final AA Report due on May 31, 2013.

10. Respondent failed to provide to the Office of Probation, proof of attendance of Ethics School due on May 31, 2013.

11. Respondent failed to submit to the Office of Probation, the proof of successful passage of the MPRE due on May 31, 2013.

12. Respondent failed to timely submit to the Office of Probation, AA meeting reports due on December 10, 2012, February 10, 2013, March 10, 2013, April 10, 2013, and May 10, 2013. Respondent submitted the AA meeting reports on December 11, 2012, February 12, 2013, March 12, 2013, April 15, 2013, and May 13, 2013, respectively.

13. Respondent failed to timely submit to the Office of Probation, Quarterly reports due on July 10, 2012, October 10, 2012, and April 10, 2013. Respondent submitted the quarterly reports on June 4, 2013.

14. Respondent failed to timely report to the Office of Probation, UCM compliance due on July 10, 2012, and April 10, 2013. Respondent submitted both of the UCM compliance reports on June 18, 2013.

15. Respondent failed to timely submit to the Office of Probation, the final report due on May 31, 2013. Respondent submitted the final report on June 18, 2013.

16. Respondent was a resident at the Santa Barbara Rescue Mission Men's recovery program from September 2012 through September 2013.

17. Respondent did not seek to modify the conditions of his probation with the court.

#### CONCLUSIONS OF LAW:

18. By failing to submit four AA meeting reports, a UCM compliance report, provide proof of attendance at Ethics School, proof of passage of the MPRE, and by failing to timely submit five AA meeting reports, three quarterly reports, two UCM compliance reports, and the final report, respondent failed to comply with all conditions attached to the public reproof in willful violation of Rules of Professional Conduct, rule 1-110.

#### FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which he was convicted involved other misconduct warranting discipline.

#### Case No. 14-C-3434 (Conviction Proceeding)

#### PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

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

20. On January 27, 2014, the San Luis Obispo County District Attorney filed a criminal complaint in the San Luis Obispo County Superior Court, case no. 14-C-00839, charging respondent with one count of violation of Vehicle Code section 23152(a)[Driving Under the Influence of Alcohol-with a prior], a misdemeanor, and one count of violation of Vehicle Code section 23152(b)[Driving While Having a 0.08% or Higher Blood Alcohol-with a prior], a misdemeanor.

21. On May 20, 2014, the court entered respondent's plea of nolo contendere to the count of violation of Vehicle Code section 23152(b)[Driving While Having a 0.08% or Higher Blood Alcohol-with a prior], a misdemeanor, and based thereon, the court found respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining count in the furtherance of justice.

22. On September 4, 2014, the court ordered respondent among other things, to serve 90 days in a Sober Living facility, enter into a Driving Under the Influence three month program, and placed respondent on court supervised bench probation for three years.

23. On November 26, 2014, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense(s) for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

**FACTS:**

24. On January 3, 2014, respondent drove a vehicle while intoxicated. On that date, at about 11:55 p.m., in San Luis Obispo County, respondent was traveling at an unsafe speed and stopped at three consecutive intersections with green lights at each intersection.

25. A police officer responded to the scene to conduct an investigation. Respondent's breath smelled of alcohol. Respondent also had watery eyes. Upon being questioned by the police officer, respondent denied consuming any alcohol.

26. Upon exiting his vehicle, respondent was unsteady on his feet and bumped into his car as he walked along the side. Respondent was arrested for driving under the influence and the officer found an open plastic bottle of vodka in respondent's sweatshirt. The cap was on the bottle, but there was less than half of the vodka remaining. Once under arrest, respondent elected to submit to a breath test. The results were: 0.14% Blood Alcohol Content ("BAC") and 0.14% BAC.

27. Respondent enrolled himself as a resident at the Santa Barbara Rescue Mission, Cornerstone Sober Living facility in January 2014 through early May 2014.

28. Respondent moved to the New House Sober Living facility in Santa Barbara in early May 2014 and has remained as a resident there to date.

**CONCLUSIONS OF LAW:**

29. The facts and circumstances surrounding the above-described violation(s) did not involve moral turpitude but did involve other misconduct warranting discipline.

**AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline (Std. 1.5(a)):**

In State Bar case no. 11-C-19478, effective on May 31, 2012, respondent was disciplined with a public reproof for a period of one year after being convicted for violating Vehicle Code section 23152 (b) (driving a vehicle with a blood-alcohol level of .08% or more with a prior), which constitutes other misconduct warranting discipline. In the underlying criminal matter, on May 5, 2010, imposition of sentence was suspended and Respondent was sentenced to 45 days of county jail, and placed on summary probation for 36 months.

In regard to respondent's prior conviction, on October 30, 2000, respondent was convicted of violating Vehicle Code section 23152(a)(Driving Under the Influence of Alcohol), misdemeanor, in San Luis Obispo County.

**Multiple Acts of Misconduct (Std. 1.5(b)):**

Respondent's present misconduct involves the failure to submit all AA meeting reports, UCM compliance reports, proof of attendance at Ethics School, proof of successful passage of the MPRE, and failure to timely submit all AA meeting reports and UCM compliance reports. Respondent engaged in

multiple acts of misconduct by violating all the conditions of his reproof. Respondent has also been convicted of DUI for the third time.

### **MITIGATING CIRCUMSTANCES.**

**Pretrial Stipulation:** Respondent is entitled to mitigation for entering into a stipulation of facts and conclusions of law prior to trial, thereby preserving 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].)

### **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).)

Standard 1.7(a) states 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. Standard 2.12(b) applies to the instant matter as it involves a criminal misdemeanor conviction not involving moral turpitude, which provides for suspension or reproof. In addition, Standard 2.10, which provides for actual suspension, applies here as respondent has violated probation conditions attached to his discipline. The degree of sanction depends on the nature of the condition violated and the member’s unwillingness or inability to comply with disciplinary orders. Pursuant to Standard 2.10, actual suspension is warranted for failing to comply with respondent’s reproof.

Standard 1.8(a) states that if a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust. Here, the exceptions do not apply, and therefore the sanction must be greater than a public reproof, which was previously imposed.

In evaluating respondent's misconduct and assessing the level of discipline, the standards require actual suspension. Based on his prior record of discipline, progressive discipline is warranted. Although untimely, respondent made efforts to satisfy some of the terms of his reproof. Respondent belatedly submitted some AA meeting reports, quarterly reports, UCM compliance reports, and final report. Further, respondent is entitled to mitigation for entering into a pre-trial stipulation. Although respondent was a resident at the Santa Barbara Rescue Mission from September 2012 through September 2013, where he was placed under intensive restrictions, by not taking and passing the MPRE, nor attending Ethics School, or submitting all AA meeting reports and all UCM compliance report, respondent has committed multiple acts of misconduct. Further, respondent did not seek to modify the terms and conditions of his probation with the court.

In January of 2014, within four months of completing the recovery program at the Santa Barbara Rescue Mission, respondent was arrested for his third DUI. Respondent's subsequent conviction of his third DUI is serious misconduct because it demonstrates a disregard for the law and safety of others.

However, in the instant case, the conditions attached to the discipline, if complied with, should minimize the likelihood of respondent engaging in similar misconduct in the future. Considering Standards 1.7(a), 1.8(a), 2.10, and the purposes of the Standards, the appropriate level of discipline for respondent in this matter is two years of stayed suspension, two years of probation with substance abuse conditions, including 90 days of actual suspension and until respondent takes and passes the MPRE.

In the present case, although respondent's misconduct does not involve the practice of law it is nonetheless serious because it demonstrates a threat to the safety of others and respondent's inability to comply with the law and disciplinary conditions. In light of the facts and circumstances surrounding this matter, along with the mitigating and aggravating factors, a lengthy suspension will fulfill the primary purposes of discipline by protecting the public, the courts and the legal profession; maintaining the highest professional standards; and preserving public confidence in the legal profession.

In *Conroy v. State Bar* (1990) 51 Cal. 3d 799, the attorney was publicly reproofed and then failed to take and pass the MPRE within one year as required. Respondent defaulted in the matter before the Hearing Department, but participated in the Review Department and Supreme Court proceedings. The court found respondent's subsequent passage of the MPRE was mitigating but was outweighed by aggravating factors. In aggravation the court considered respondent's prior discipline, respondent's default at the Hearing Department level and respondent's lack of remorse for the present violation. The discipline imposed in light of the aggravation was one year suspension, stayed, two years of probation and sixty-day actual suspension.

Here, similar to *Conroy*, respondent belatedly complied with some of the conditions attached to his public reproof and has a prior record of discipline. However, unlike *Conroy*, respondent has not defaulted in this matter and has expressed his desire to enter into a pre-filing stipulation for settlement in mitigation. On the other hand, respondent in the present matter has been convicted of a DUI for the third time which constitutes other misconduct warranting discipline. Therefore an increased level of discipline consisting of a two year suspension, stayed, two year probation with conditions, including

substance abuse conditions, and a ninety-day actual suspension and until respondent takes and passes the MPRE, is appropriate.

In *In re Kelley* (1990) 52 Cal.3d 487, an attorney was convicted twice of drunk driving within a 31-month period. On her first arrest, the attorney had driven her car into an embankment and was arrested at the scene. While on probation, she was stopped by a police officer while driving home and eventually arrested after failing a field sobriety test. No one was injured in either of her drunk driving offenses. The Court found that the attorney's conduct did not involve moral turpitude, but rather constituted other misconduct warranting disciplinary action. The Court ordered her publicly reprovved and directed her to participate in the State Bar's program on alcohol abuse. Here, respondent has been convicted three times of driving under the influence of alcohol. Further, respondent failed to comply with the terms of his public reprovval stemming from his second DUI conviction referral matter. Therefore, a lengthier and actual suspension of 90 days is appropriate.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of May 1, 2015, the prosecution costs in this matter are \$5,317. 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**



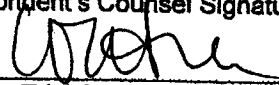
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, and/or any other educational course(s) to be ordered as a condition of reprovval. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: <b>BRIAN JOSEPH BAKER</b>	Case number(s): 13-H-13579; 14-C-3434
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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>5/4/15</u> Date	<u></u> Respondent's Signature	<u>BRIAN JOSEPH BAKER</u> Print Name
<u>5/4/15</u> Date	<u></u> Respondent's Counsel Signature	<u>SUSAN MARGOLIS</u> Print Name
<u>5/7/15</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>SUE HONG</u> Print Name

(Do not write above this line.)

In the Matter of: <b>BRIAN JOSEPH BAKER</b>	Case Number(s): <b>13-H-13579; 14-C-3434</b>
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### ACTUAL 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.

Page 5: The box for Paragraph (10) and the box entitled "Substance Abuse Conditions" are deemed checked.

Page 6: The box and language for Paragraph (5) is deleted (having been replaced as provided above).

Page 7, Paragraph b: The following language is added at the end of the second paragraph (after the words "new self-help group."): "The foregoing requirements and prohibitions are solely applicable to Respondent's efforts to comply with the condition of this probation that he attend eight meetings each month at an approved self-help group. Nothing contained in this paragraph is intended or is to be interpreted as prohibiting or regulating Respondent's ability to seek additional treatment or assistance from any other self-help group."

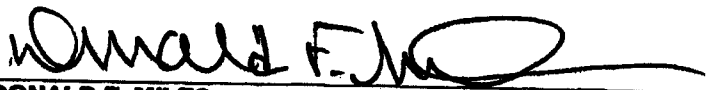
Page 8: The provision re Random Testing is modified to provide: "Respondent will be randomly tested a minimum of six times during the period of his probation, but no more than 12 times."

Page 8: Paragraph d is deleted in its entirety.

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.)

5/8/15

Date



**DONALD F. MILES**  
Judge of the State Bar Court

(Effective January 1, 2014)



**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 May 8, 2015, 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:

**SUSAN LYNN MARGOLIS  
MARGOLIS & MARGOLIS LLP  
2000 RIVERSIDE DR  
LOS ANGELES, CA 90039**

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

**Sue K. Hong, Enforcement, Los Angeles**

**Terrie Goldade, Probation, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 8, 2015.

*Paul Barona*

Paul Barona  
Case Administrator  
State Bar Court



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST June 20, 2018

State Bar Court, State Bar of California,  
Los Angeles

By \_\_\_\_\_  
Clerk

(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>REPROVAL</b>			PUBLIC MATTER
<b>Counsel For The State Bar</b>  Anand Kumar Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1000  Bar # 261592	<b>Case Number(s):</b> 11-C-19478	<b>For Court use only</b>  <div style="text-align: center; font-size: 1.5em; font-weight: bold; margin-bottom: 10px;">FILED</div> <div style="text-align: center; font-weight: bold;">                         MAY 10 2012 ✓                          STATE BAR COURT                          CLERK'S OFFICE                          LOS ANGELES                     </div>	
<b>In Pro Per Respondent</b>  Brian J. Baker 1103 Johnson Ave., Suite D San Luis Obispo, CA 93401 (805) 602-2914  Bar # 257228	<b>Submitted to: Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>PUBLIC REPROVAL</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
<b>In the Matter of:</b> Brian J. Baker  Bar # 257228  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 August 1, 2008.
- (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 11 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."

(Effective January 1, 2011)

(Do not write above this line.)

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

- (1)  Prior record of discipline [see standard 1.2(f)]
- (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline

(Effective January 1, 2011)

(Do not write above this line.)

- (e)  If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See attachment.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

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

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. Respondent has cooperated with the State Bar by entering into a stipulated settlement for the matter described herein without the need of a trial.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.

(Effective January 1, 2011)

(Do not write above this line.)

- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation. At the time of the arrest leading to the conviction referral proceedings in this matter, Respondent was suffering from an alcohol relapse and he has since taken subsequent steps to prevent a future relapse by spending eight months at a sober living facility and becoming more actively involved in AA.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

Respondent was admitted to the Washington State Bar in 2003 and admitted to the California State Bar in 2008. Respondent has no prior record of California or Washington state bar discipline.

**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:**

- (1)  Respondent must comply with the conditions attached to the reproval for a period of one (1) year.
- (2)  During the condition period attached to the reproval, 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

(Effective January 1, 2011)

(Do not write above this line.)

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.

- (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 reprobation. 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 reprobation 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 probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, 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 reprobation.
- (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:
- (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 reprobation.
- No MPRE recommended. Reason:

- (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:**

(Effective January 1, 2011)

Attachment language (if any):

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

IN THE MATTER OF:                      Brian J. Baker

CASE NUMBERS:                         11-C-19478

**FACTS AND CONCLUSIONS OF LAW.**

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

Case No. 11-C-19478 (Conviction Proceedings)

**PROCEDURAL BACKGROUND IN CONVICTION PROCEEDINGS:**

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.
2. On May 5, 2010, Respondent pled no contest and was convicted of violating California Vehicle Code, section 23152, subdivision (b) for driving a vehicle with a blood-alcohol level of .08% or more on December 24, 2009.
3. On February 2, 2012, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: For a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the misdemeanor violation of Vehicle Code, section 23152, subdivision (b) (driving with a blood-alcohol level of .08% or more), of which Respondent was convicted, involved moral turpitude or other misconduct warranting discipline.

**FACTS:**

4. At approximately 4 p.m. on December 24, 2009, a San Luis Obispo County CHP officer was stopped at an intersection in one of two left-turn lanes, when he observed Respondent's vehicle approach the CHP vehicle from behind while driving on the rim of a flat right front tire before suddenly swerving into the second left-turn lane next to the CHP vehicle.
5. The CHP officer positioned his vehicle behind Respondent's car and activated the red front lights. Once the stoplight turned green, Respondent made a left turn with speed causing sparks but did not slow down or yield despite the flat tire.



6. The CHP officer activated the emergency lights and siren, however Respondent continued to drive away and made a right turn onto another local street before ultimately slowing down, stopping in a lane of traffic and then turning off his car.
7. The CHP officer approached Respondent's vehicle and asked Respondent to lower his window, which Respondent was unable to do because the car ignition was not on, so the CHP officer asked Respondent to open his front door. The officer asked Respondent if he knew that he had a flat tire and he responded affirmatively.
8. After the officer asked for Respondent's license, Respondent began fumbling around his ashtray and made several attempts to place his car in drive. Respondent was uncooperative in answering questions, so the CHP officer requested a second unit.
9. The CHP officer smelled alcohol coming from inside Respondent's vehicle. When asked if he had anything to drink, Respondent stated "nothing." Respondent was unable to provide registration or proof of insurance to the CHP officer.
10. The CHP officer asked Respondent to exit the vehicle, which Respondent initially refused to do. After stepping onto the sidewalk with much difficulty, Respondent was asked to perform field sobriety tests, which he refused.
11. Respondent admitted that he had been drinking vodka and stated repeatedly that he was "sorry" at which point the officer could smell alcohol emanating from Respondent's breath.
12. The officer then placed Respondent under arrest and blood sample was taken from Respondent at the San Luis Obispo Police station, which showed that Respondent had a .29% blood-alcohol level at the time.
13. On January 5, 2010, a misdemeanor complaint was filed against Respondent in San Luis Obispo County Superior Court.
14. Respondent was previously convicted of driving under the influence of alcohol, a misdemeanor violation of Vehicle Code, section 23152, subdivision (a) in San Luis Obispo County on October 30, 2000. Consequently, on May 5, 2010, Respondent was convicted of a misdemeanor violation of Vehicle Code, section 23152, subdivision (b), driving a vehicle with a blood-alcohol level of .08% or more with a prior.
15. On May 5, 2010, imposition of sentence was suspended and Respondent was sentenced to 45 days of county jail, placed on summary probation for 36 months; ordered to pay all fines and fees, to enroll in a DWI second offenders program, not to drive with blood-alcohol content level exceeding a .00% and obey all laws. Respondent has subsequently served his jail sentence, paid all restitution and fines, and enrolled in and has partially completed the DWI second offenders program (scheduled to be completed in June 2012).

### CONCLUSION OF LAW:

Respondent's misdemeanor conviction for violating Vehicle Code, section 23152, subdivision (b) (driving a vehicle with a blood-alcohol level of .08% or more with a prior) constitutes other misconduct warranting discipline.

### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was April 12, 2012.

### **AGGRAVATING CIRCUMSTANCES.**

#### **FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.**

*Standard 1.2(b)* provides for a greater degree of sanction set forth in the standards where aggravating circumstances exist. Under *Standard 1.2(b)(iv)*, Respondent's misconduct evidences that he harmed the public and administration of justice, because he did not immediately yield and continued to drive with a blood alcohol level of .29% at the time the CHP officer activated the siren and emergency lights of the CHP vehicle. His misconduct also indicates that Respondent was uncooperative with the CHP officer's investigative questioning, including making several attempts to put his car in drive necessitating an additional unit on scene.

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

*Standard 3.4* provides that a final conviction of a member which does not involve moral turpitude, but does involve other misconduct warranting discipline shall result in a sanction as prescribed under part B of the *Standards*. Accordingly, *Standard 2.6(a)* holds that a willful violation of *Business and Professions Code*, section 6068(a) shall result in disbarment or suspension, depending on the gravity of the offense or the harm.

#### **C. Applicable Case Law:**

In fashioning the appropriate level of discipline, the *Standards* are the starting point. Consideration must also be given to whether the recommended discipline is consistent with prior decisions of the California Supreme Court and the Review Department of the State Bar Court.

A second alcohol-related conviction for driving under the influence is conduct warranting discipline—a public reproof. *In re Kelley* (1990) 52 Cal.3d 487. In *Kelley*, the Supreme Court publicly reproofed an attorney and ordered her to comply with certain disciplinary conditions for three years, including conditions to address her use of alcohol, despite finding that attorney Kelley had significant mitigation. Her blood alcohol content in the second incident was tested at .16% and .17%. Here, Respondent's blood alcohol level was tested at .29% and his actions indicated he did not immediately yield to the CHP officers and continued driving causing a further threat to the public. As stated in another conviction referral matter, "[t]he fact that respondent's drunk driving did not result in serious

(Do not write above this line.)

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injury or death to another was merely fortuitous. It does not render the respondent's conduct any less serious." *In re Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 215. Similarly, the public danger created by driving with a blood alcohol level of .29% coupled with a prior driving under the influence conviction show why Respondent's conviction in this matter constitutes other misconduct warranting discipline.

Accordingly, Respondent should be publicly reprovved for one (1) year with standard conditions including compliance with the terms of his criminal probation.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of April 12, 2012, the prosecution costs in this matter are approximately \$2,287.00. 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.)

In the Matter of: Brian J. Baker	Case Number(s): 11-C-19478
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### Substance Abuse Conditions

- a.  Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
- b.  Respondent must attend at least 8 meetings per month of:
- Alcoholics Anonymous
  - Narcotics Anonymous
  - The Other Bar
  - Other program
- As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10<sup>th</sup>) day of the following month, during the condition or probation period.
- c.  Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
- d.  Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.
- e.  Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. 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, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.



Other:

(Do not write above this line.)

In the Matter of: Brian J. Baker	Case number(s): 11-C-19478
-------------------------------------	-------------------------------

### 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>April 23, 2012</u> Date	 Respondent's Signature	<u>Brian J. Baker</u> Print Name
<u>N/A</u> Date	<u>Respondent's Counsel Signature</u>	<u>N/A</u> Print Name
<u>April 30, 2012</u> Date	 Deputy Trial Counsel's Signature	<u>Anand Kumar</u> Print Name

(Do not write above this line.)

In the Matter of: Brian J. Baker	Case Number(s): 11-C-19478
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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:

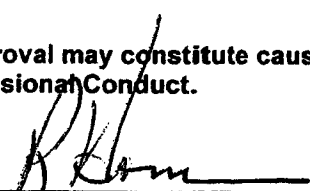
- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

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

5/7/12

  
RICHARD A. HONN  
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 May 10, 2012, 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:

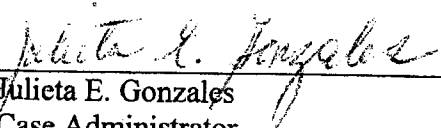
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

BRIAN J BAKER ESQ  
1103 JOHNSON AVE  
SUITE D  
SAN LUIS OBISPO, CA 93401

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

Anand Kumar, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 10, 2012.

  
\_\_\_\_\_  
Julieta E. Gonzales  
Case Administrator  
State Bar Court



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST June 20, 2018

State Bar Court, State Bar of California,  
Los Angeles

By *[Signature]*  
Clerk



**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 San Francisco, on November 15, 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:

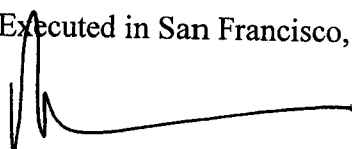
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

BRIAN J. BAKER  
262 N GLENN AVE  
FRESNO, CA 93701 - 1819

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

Rachel S. Grunberg, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 15, 2018.

  
\_\_\_\_\_  
Vincent Au  
Court Specialist  
State Bar Court