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State Bar Court of California Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar Djinna Gochis/Diane Meyer Assistant Chief/Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015 (213) 765-1226 Bar # 108360/146643	Case number(s) 03-0-02627	(for Court's use) <div style="text-align: center;"> FILED OCT -6 2005 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent Erica Tabachnick 900 Wilshire Boulevard No. 1000 Los Angeles, Ca. 90017 (213) 895-4640 Bar # 94324	<div style="font-size: 2em; font-weight: bold;">PUBLIC MATTER</div>	
In the Matter of Peter David Gordon Bar # 76578 A Member of the State Bar of California (Respondent)	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 21, 1977
(date)
- (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 and order consist of 13 pages.
- (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."
- (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.

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- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- (a) costs added to membership fee for calendar year following effective date of discipline (public reproof)
 - (b) case ineligible for costs (private reproof)
 - (c) costs to be paid in equal amounts for the following membership years:
2007, 2008, 2009
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - (d) costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - (e) costs 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 inquires and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [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 _____

(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.
- (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. (see page four)

- (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. (also, see page four)
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.

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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 him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

The Respondent was admitted to the practice of law in the State of California on December 21, 1977, and he has no prior record of discipline which is entitled to great weight (see In the Matter of Peavey (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483, 492).

Although a violation of rule 3-300 does not require harm to the client, (see, Ames v. State Bar (1973) 8 Cal. 3d 910, 920 ("injury to a client is not an essential ingredient of adversity"), the fact that Belenky advised that he received no funds from the distribution of the films warrants consideration as mitigation. That Respondent is not seeking to enforce the agreement is also, for purposes of this stipulation, mitigating.

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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 Reproof:

- (1) Respondent must comply with the conditions attached to the reproof for a period of one year
- (2) During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office 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 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 condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and, if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next following quarter date and cover the extended period. see, also, page 10 Other Facts and conditions.
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 quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

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- (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 of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered. 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 required 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 ordered. Reason: The completion of Ethics School/CTA School will adequately address the violation and is not required for public protection in this case(1) The following conditions are attached hereto and incorporated: (Respondent G, (Rev. Dept. 1992)

- Substance Abuse Conditions Law Office Management Conditions
- Medical Conditions Financial Conditions

F. Other Conditions Negotiated by the Parties:

See Stipulation, page 10

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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF of the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

- Respondent must pay the above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than _____.

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

c. Client Funds Certificate

- 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
 - a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

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b. Respondent has kept and maintained the following:

- i. a written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

(see, page 10 for additional conditions, related to pending fee claim by Respondent)

ATTACHMENT TO:

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: PETER DAVID GORDON

CASE NUMBER: 03-0-0-02627-RMT

FACTS AND CONCLUSIONS OF LAW:

Facts

1. On July 12, 1991, Michael Belenky ("Belenky") hired the Respondent for representation in a lawsuit entitled 21st Century Film Corporation vs. Michael Belenky and doing business as M.O.B. Entertainment, Los Angeles Superior Court case number BC 029647 ("the 21st Century action"). The representation included filing and handling a cross complaint against 21st Century Film Corporation (21st Century), Menahem Golan ("Golan"), Chief Executive Officer of 21st Century, and Ami Artzi ("Artzi"), Chief Financial Officer of 21st Century. On July 12, 1991, Belenky and Respondent entered into a contingency fee agreement for the representation in which Belenky agreed to pay 40 percent of all amounts recovered. Belenky further agreed to pay the costs associated with the representation.
2. On July 30, 1991, as partial settlement of the lawsuit, Golan and Artzi agreed to release to Belenky four Russian films that Belenky had licensed from 21st Century ("the films").
3. On July 30, 1991, Belenky and Respondent entered into a written agreement in which Respondent would receive a percentage of the profits from the distribution of the films in connection with his representation.
4. Respondent did not inform Belenky, in writing, or by any other means, that Belenky may seek the advice of independent counsel regarding this agreement securing legal fees.
5. To date, no profits have been realized from the distribution of the films.

Conclusions of Law

6. By entering into this Russian film distribution agreement with Belenky on July 31, 1991, and by failing to inform him in writing that he may seek the advice of an independent lawyer of his choice and giving him reasonable opportunity to

seek that advice regarding the agreement, Respondent entered into a business transaction; or knowingly acquired an ownership, possessory, security, or other pecuniary interest adverse to the client in willful violation of rule 3-300 of the Rules of Professional Conduct.

OTHER FACTS AND CONDITIONS OF THE STIPULATION

Subsequent to the events described herein, circumstances arose in which Respondent and Belenky became involved in a dispute over settlement monies received in connection with the 21st Century representation and fees owed to the Respondent. On November 12, 2004, Respondent brought a civil action against Belenky for unpaid legal fees. The matter is pending arbitration. The next Superior Court hearing on the matter is January 10, 2006.

For the purposes of settlement and resolution of the State Bar complaint, within seventy (70) days of the effective date of this stipulation, Respondent will place the sum of \$8,624.00, in a separate, non-IOLTA ("Interest on Lawyer's Trust Account") interest bearing trust account earmarked as disputed funds in the Belenky matter, pending the outcome of the civil litigation and/or arbitration (binding), in which he agrees he will fully participate. Within ten days (10 days) of the establishment of the special trust account, he will provide the name of the bank, the number and name of the account, to the Probation Unit, in writing. As part of his quarterly reporting requirements, pursuant to condition E. 5 of this Stipulation, Respondent must update the Probation Unit of the status of the litigation regarding fees. Within thirty days (30) of the conclusion of the civil litigation and the decision regarding the action as to legal fees, Respondent will advise the Probation Unit, in writing, of the outcome and the disposition of the funds held in trust.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of September 23, 2005, the estimated prosecution costs in this matter are approximately \$3,654.00 plus taxable costs of \$180.75. Respondent acknowledges that these figures are an estimate. 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.

PENDING PROCEEDINGS

The disclosure date referred to, on page one, paragraph A.(7), was September 23, 2005.

DISMISSALS

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Count</u>	<u>Alleged Violation</u>
Two	Business and Professions Code Section 6068(m)
Three	Rule of Professional Conduct, rule 4-100(B)(1)
Four	Business and Professions Code Section 6106
Five	Rule of Professional Conduct, rule 4-100(A)
Six	Business and Professions Code Section 6106
Seven	Rule of Professional Conduct, rule 4-100(B)(3)

AUTHORITY SUPPORTING DISCIPLINE

Standards for Attorney Sanctions for Professional Misconduct Standard 2.8 provides that culpability of a willful violation of rule 3-300, shall result in suspension unless the extent of the member's misconduct and the harm to the client are minimal, in which case, the degree of discipline shall be a reproof.

The parties have agreed for the purposes of this stipulation only that since it appears there was no actual profit from the films, there was no harm from the film distribution agreement.

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THE STATE BAR OF CALIF

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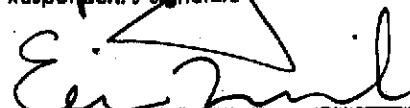
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SIGNATURE OF THE PARTIES

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.

Date <u>9/23/05</u>	 Respondent's signature	<u>Peter David Gordon</u> Print name
Date <u>9/23/05</u>	 Respondent's Counsel's signature	<u>Erica Tabachnick</u> Print name
Date	Deputy Trial Counsel's signature	<u>Djinna M. Gochis</u> Print name

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THE STATE BAR OF CALIF

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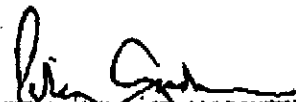


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SIGNATURE OF THE PARTIES

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.

Date: 9/23/05	 Respondent's signature	Peter David Gordon Print Name
Date: 9/23/05	 Respondent's Counsel's signature	Erica Tabachnick Print Name
Date: 9/23/05	 Deputy Trial Counsel's signature	Djinna M. Gochis Print Name

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ORDER

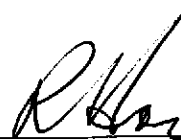
Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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 125(b), 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.

10/5/05
Date



Judge of the State Bar Court

RICHARD A. HONN

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; 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 October 6, 2005, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING PUBLIC REPROVAL**

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:

Erica Ann Tabachnick
900 Wilshire Blvd #1000
Los Angeles, CA 90017

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

DIANE MEYERS, Enforcement, Los Angeles
DJINNA GOCHIS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 6, 2005**.



Tammy R. Cleaver
Case Administrator
State Bar Court