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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 JOSEPH R. CARLUCCI DEPUTY TRIAL COUNSEL 1149 South Hill Street Los Angeles, CA 90015 (323) 765-1053 Bar # 172304	Case number(s) 03-0-03162-RAH 03-0-05037-RAH	(for Court's use) <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.5em;">NOV 18 2005</div> <div style="text-align: center; font-size: 0.8em;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div> <div style="position: absolute; top: 20px; right: 20px; border: 1px solid black; border-radius: 50%; padding: 2px;">KMS</div>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent DAVID A. CLARE 4675 Mac Arthur Crt #1250 Newport Beach, CA 92660 Bar # 44971	PUBLIC MATTER	
In the Matter of MICHAEL A. LOTTA Bar #94301 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 STAYED SUSPENSION; NO ACTUAL SUSPENSION <input checked="" 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 16, 1980
(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 12 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
(b) costs to be paid in equal amounts prior to February 1 for the following membership years:
2007, 2008
(hardship, special circumstances or other good cause per rule 282, Rules of Procedure)
(c) costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
(d) costs entirely waived

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 00-0-15609 et al
(b) Date prior discipline effective December 4, 2004
(c) Rules of Professional Conduct/ State Bar Act violations: RPC Rules 3-110(A), 3-510, 3-700(A)(1), 3-700(D)(1), 4-100(B)(1), 4-100(B)(4)
Business and Professions Code 6068(m), 6106

- (d) Degree of prior discipline 60 Days Actual Suspension, Two Years Stayed Suspension and Three years Probation
(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.

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- (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.
- (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.
- (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) **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.

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- (10) **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.
- (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:

D. Discipline

1. Stayed Suspension.

(a) Respondent must be suspended from the practice of law for a period of Six (6) months

- 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 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this Stipulation.
- iii. and until Respondent does the following: _____

The above-referenced suspension is stayed.

2. Probation.

Respondent is placed on probation for a period of one (1) year, which will commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

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E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (3) Within 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.
- (4) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state 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 days, that report must be submitted on the next quarter date, and cover the extended period.
- In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.
- (5) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (6) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) Within one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: _____
- (8) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

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F. Other Conditions Negotiated by the Parties:

- (1) Multistate Professional Responsibility Examination: Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- No MPRE recommended. Reason: Respondent ordered to take and pass MPRE as condition of probation in
Supreme Court Case No. S127210 entered
on November 4, 2004
- (2) Other Conditions:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MICHAEL A. LOTTA (No. 94301)

CASE NUMBER(S): 03-O-03162, 03-O-05037

FACTS AND CONCLUSIONS OF LAW.

Respondent Michael A. Lotta ("Lotta") admits that the following facts are true and that he is culpable of a violation of Rules of Professional Conduct, rule 4-100(B)(4).

FACTS

On February 25, 2000, Barbara J. Lilly ("Lilly") employed Respondent to represent her in two personal injury matters, the first of which arose from a rear-end collision on February 19, 2000 and the other which arose from a rear-end collision on February 21, 2000.

Lilly received medical treatment and incurred medical expenses from two health care providers, David Dauer, D.C. ("Dauer") and Krynen Chiropractic ("Krynen"), for the injuries she sustained in the two accidents.

Lilly made a claim for and received medical payment coverage through her automobile liability policy with Mercury Insurance Company ("Mercury"). Lilly also sought and received additional payment for her medical expenses through her health insurance policy with Aetna U.S. Healthcare ("Aetna"). Both companies' payments to were subject to reimbursement through liens asserted on Lilly's personal injury cases.

Respondent timely filed separate personal injury lawsuits on behalf of Lilly concerning

the two accidents. The first filed lawsuit went to trial and resulted in a defense verdict. In September 2002, Respondent settled the second lawsuit with Lilly's consent for \$11,000. Respondent received an \$11,000 settlement check from 21st Century Insurance Company made payable to Lilly and Respondent. On November 8, 2002, Respondent deposited Lilly's settlement check into his client trust account at Farmers and Merchant Bank, account no. 08-048738 ("CTA").

Respondent informed Lilly that this costs and attorney's fees totaled \$7,569.69. Respondent also informed Lilly that three medical liens on the settlement totaled more than \$14,000, which exceeded \$3,430.31, the remaining amount of settlement funds once Respondent's fees and costs were subtracted.

Though Respondent negotiated with Mercury a reduction of its lien from \$5,000 to \$1,822, he did not disburse any of Lilly's funds to Mercury. Respondent was unable to negotiate a reduction with the two remaining lienholders, the Rawlings Company ("Rawlings"), which held the Aetna's lien in the amount of \$7,436.97, and Dauer, whose lien amounted to \$1,982.81.

On June 16, 2003 and July 3, 2003, Lilly sent letters to Respondent informing him that she was receiving past due notices from Dauer regarding his lien, and that Mercury had advised her that it was turning its lien over to its legal department for collection. In each letter, Lilly requested that Respondent negotiate reductions in, or otherwise resolve, the liens and pay the lienholders from Lilly's funds held in Respondent's CTA.

On August 19, 2004, after Lilly had complained to the State Bar regarding Respondent's

failure to disburse her settlement funds to her medical providers, Respondent filed an interpleader action for the judicial division of Lilly's settlement funds among Lilly, Mercury, Rawlings, Dauer and Kryner.

Between November 8, 2002 and August 19, 2004, Respondent did not take any meaningful steps to negotiate reductions with Lilly's lienholders or otherwise disburse any of Lilly's funds held in Respondent's CTA.

CONCLUSIONS OF LAW

By failing to take any meaningful steps to disburse Lilly's settlement funds held in his CTA from November 8, 2002 and August 19, 2004, as requested by Lilly, Respondent failed to promptly pay client funds as requested by his client in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was July 7, 2005. A second disclosure letter was sent to Respondent on September 19, 2005. A third disclosure letter was sent to Respondent on October 28, 2005.

DISMISSALS.

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

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
03-O-03162	One	Rules of Professional Conduct, rule 3-110(A)
03-O-05037	Three	Rules of Professional Conduct, rule 4-100(B)(4)

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.2(b)(i), *Standards for Attorney Sanctions for Professional Misconduct.*

Standard 2.2(b), *Standards for Attorney Sanctions for Professional Misconduct.*

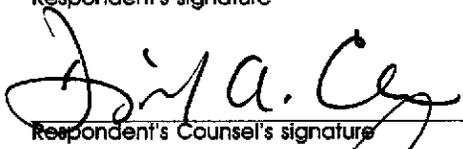
In the Matter of Lazarus (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387.

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In the Matter of Michael A. Lotta	Case number(s): 03-0-03162; 03-0-05037
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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>11/8/05</u> Date	 Respondent's signature	<u>MICHAEL A. LOTTA</u> Print name
<u>11-4-05</u> Date	 Respondent's Counsel's signature	<u>DAVID A. CLARE</u> Print name
<u>11/9/05</u> Date	 Deputy Trial Counsel's signature	<u>JOSEPH R. CARLUCCI</u> Print name

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In the Matter of MICHAEL A. LOTTA	Case number(s): 03-0-03162; 03-0-05037-RAH
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ORDER

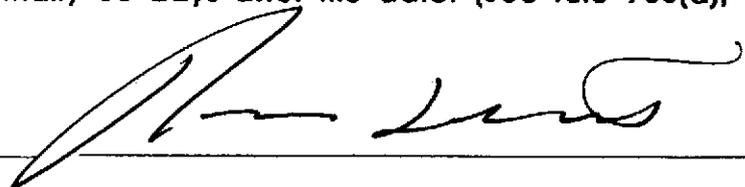
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), 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 953(a), California Rules of Court.)

Date

Nov. 14, 2005



Judge of the State Bar Court

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 November 18, 2005, 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:

**DAVID ALAN CLARE
ATTORNEY AT LAW
4675 MACARTHUR CT #1250
NEWPORT BEACH, CA 92660**

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

Joseph Carlucci, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **November 18, 2005**.



Milagro del R. Salmeron
Case Administrator
State Bar Court