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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 <b>Anthony J. Garcia</b> <b>Melanie J. Lawrence</b> Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015-2299 (213) 765-1089 Bar # 171419 & 230102	Case number(s)  04-C-14699  <b>PUBLIC MATTER</b>	(for Court's use)  <b>FILED</b>  MAR 22 2006 <i>OC</i>  STATE BAR COURT CLERKS OFFICE LOS ANGELES
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent <b>David James Bornstein</b> 13337 South Street, #145 Cerritos, CA 90703-7300 (714) 306-2488  Bar # 65256	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND            DISPOSITION AND ORDER APPROVING</b>  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of  <b>David James Bornstein</b>  Bar # 65257 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 December 18, 1975 (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 10 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):

- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- 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 284, Rules of Procedure)
- costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- 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 \_\_\_\_\_

(b)  Date prior discipline effective \_\_\_\_\_

(c)  Rules of Professional Conduct/ State Bar Act violations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(d)  Degree of prior discipline \_\_\_\_\_

(e)  If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."

(2)  **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.

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- (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:**

Respondent submitted records to his employer that reflected on February 3, 2004, he appeared in the case of EDD v. Talent Tree in Orange County Superior Court at 1:30 p.m. However, court records indicate that matter was taken off calendar. Respondent's home computer records reflect that between 2:02 p.m. and 2:40 p.m. on that date, he viewed approximately fourteen movie files containing adult pornography.

**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)  **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.

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- (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:**

**D. Discipline:**

(1)  **Stayed Suspension:**

- (a)  Respondent must be suspended from the practice of law for a period of \_\_\_\_\_
- 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: \_\_\_\_\_
- (b)  The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent must be placed on probation for a period of five (5) years which will commence upon the effective date of the Supreme Court order in this matter.  
(See rule 953, Calif. Rules of Ct.)

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(3)  **Actual Suspension:**

- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of three 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 1.4(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: Respondent must also prove by expert testimony he has gained insight into the crime and poses no risk to the community.

**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 general law, pursuant to standard 1.4(c)(ii), 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.
- (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.

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- (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 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: \_\_\_\_\_
- (2)  **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, 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 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, 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:** Respondent must report whether he is or is not in compliance with any treatment program required by Superior Court order or conditions of probation arising from his conviction for violating Penal Code section 311.11(a), in each quarterly report made to the State Bar's office of probation.

**ATTACHMENT TO STIPULATION**

**RE: FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:        DAVID JAMES BORNSTEIN

CASE NUMBER(S):        04-C-14699-RMT

**A. 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.

Facts:

1. On March 8, 2003, Respondent purchased access to the website address www.lust-gallery.com. That website address contains images of child pornography.
2. On March 4, 2004, law enforcement officers executed a search warrant at Respondent's address. There they seized two home computers.
3. Using forensic software, law enforcement officers searched the two computers. The search uncovered approximately 9,500 "live" and previously downloaded and deleted images, in movie and still form, of child pornography. "Live" images are images that have not yet been deleted.
4. The pornographic still and moving images of male and female children included children ranging from approximately four years old to pre and post pubescent teenagers. The images included children engaging in sexual acts with one another and with adults. Some images depicted children posing in various stages of undress, by themselves, with their genitalia exposed.
5. Respondent was employed as a Deputy Attorney General for the State of California during the time period in which he was accessing child pornography.
6. On March 24, 2005, Respondent was convicted in Orange County Superior Court case number 04WM09200, of violation of Penal Code section 311.11(a), Possession or Control of Child Pornography, a misdemeanor.

Legal Conclusion:

Respondent's acts of accessing and viewing child pornography is misconduct involving moral turpitude.

**B. SUPPORTING AUTHORITIES**

Business and Professions Code, section 6101(a) states that conviction of a misdemeanor

involving moral turpitude, constitutes a cause for disbarment or suspension.

Standard 3.2 states final conviction of a member for a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission shall result in disbarment. Further, the Standard provides that only if the most compelling, mitigating circumstances predominate, shall disbarment not be imposed. In those circumstances, the discipline shall not be less than a two-year actual suspension.

Moral turpitude is "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*In re Boyd* (1957) 48 Cal.2d 69, 70.)

In *In re Phillips* (1941) 17 Cal.2d 55, the petitioner was convicted of a misdemeanor violation of former Penal Code section 311, which prohibited indecent exposure and exhibition. The Court noted that the misdemeanor involved moral turpitude and ordered him disbarred.

In *In re Duggan* (1976) 17 Cal.3d 416, the petitioner was convicted of contributing to the delinquency of a minor in violation of Penal Code section 272, a misdemeanor. The Court did not hold the offense involved moral turpitude *per se* but found that given the facts of the case, on which the Court did not elaborate, the offense as a matter of law, was a crime of moral turpitude. The Court said, "the offense to which petitioner pleaded guilty evidences the commission of a reprehensible crime, offensive to every conception of morality," and ordered him disbarred. (*Id.* at 422-423.)

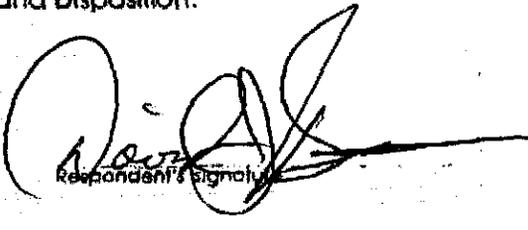
Respondent underwent a psychological evaluation that addressed his motivation to commit the crime, his current level of insight into the crime, the likelihood he will commit another similar crime, the threat of harm he poses to the community and if his possession of child pornography has an effect on his ability to perform the tasks and exercise the judgment required to practice law. The evaluator concluded Respondent suffers from a sexual disorder and that he has been greatly impacted by his arrest, thereby significantly decreasing the likelihood he would commit another similar crime. Further the evaluator concluded that Respondent does not appear to present a significant threat of harm to the community and that any risk he does pose, can be minimized by his compliance with conditions of probation. The results of the evaluation are the grounds for discipline less than disbarment.

(Do not write above this line.)

In the Matter of  DAVID JAMES BORNSTEIN	Case number(s):  04-C-14699
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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.

3/16/06 Date	 Respondent's signature	DAVID JAMES BORNSTEIN Print name
Date	Respondent's Counsel's signature	Print name
Date	Deputy Trial Counsel's signature	Anthony J. Garcia MELANIE J. LAWRENCE Print name

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In the Matter of  DAVID JAMES BORNSTEIN	Case number(s):  04-C-14699
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Date	Respondent's signature	DAVID JAMES BORNSTEIN Print name
3/17/06 Date	 Respondent's Counsel's signature	Alan B. Gordon Print name for Anthony J. Garcia
3/16/06 Date	 Deputy Trial Counsel's signature	MELANIE J. LAWRENCE Print name

(Do not write above this line.)

In the Matter of  DAVID JAMES BORNSTEIN	Case number(s):  04-C-14699
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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.

Page 4, Paragraph "D.":

- Check Box (1) - Stayed Suspension
- Check Box (a) - Add, 4 (Four) years
- Check Box (a)(i.)

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.)

03/21/06  
Date

  
RICHARD A. PLATEL  
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 March 22, 2006, 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:

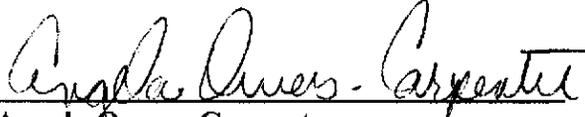
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID JAMES BORNSTEIN  
13337 SOUTH STREET #145  
CERRITOS CA 90703 7300**

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

**ANTHONY GARCIA, Enforcement, Los Angeles  
MELANIE LAWRENCE, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **March 22, 2006.**



**Angela Owens-Carpenter**  
Case Administrator  
State Bar Court