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State Bar Court of California Hearing Department		
<p>Counsel For The State Bar</p> <p>Cydney Batchelor Deputy Trial Counsel 180 Howard St., 7th Fl. San Francisco, CA 94105 Tele: 415/538-2204</p> <p>Bar # 114637</p>	<p>Case Number (s)</p> <p>05-C-1858-PEM</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED <i>ll</i></p> <p>NOV 21 2006</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Edwin Train Caldwell 750 Lindero St. #320 San Rafael, CA 94901 Tele: 415/259-2900</p> <p>Bar # 36303</p>	<p>Submitted to:</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of:</p> <p>JONATHAN A. BORNSTEIN</p> <p>Bar # 196345</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted August 6, 1998.
- (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 10 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." See attached.
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law". See attached.
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority." See attached.



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- (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 added to membership fee for calendar year following effective date of discipline.
 - costs to be paid in equal amounts prior to February 1 for the following membership years: 2007 and 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.
- (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. See attached.
- (8) No aggravating circumstances are involved.

Additional aggravating circumstances: None

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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.
See attached.
- (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. **See attached.**
- (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: See attached

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D. Discipline:

(1) Stayed Suspension:

(a) Respondent must be suspended from the practice of law for a period of **Eighteen (18) 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 **three (3) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 953, California Rules of Court)

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 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.
- (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 whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and

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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 the 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 checked="" 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 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: .
- (2) **Other Conditions: See attached**

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JONATHAN A. BORNSTEIN

Case number(s):
05-C-1858-PEM

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 four (4) meetings per month of:
- Alcoholics Anonymous
 - Narcotics Anonymous
 - The Other Bar
 - Other program **See attached**

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.

- 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.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: **JONATHAN ANDREW BORNSTEIN**

CASE NUMBER(S): **05-C-01858-PEM**

FACTS AND CONCLUSIONS OF LAW.

Case No. 05-C-01858-PEM:

Procedural Background: This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professional Code and rule 951 of the California Rules of Court. On February 9, 2006, Respondent pled guilty to a misdemeanor violation of one count of Vehicle Code section 23152(b), driving while having a .08% or higher blood alcohol, with two admitted priors. On May 4, 2006, the Review Department of the State Bar issued an order referring the matter to the Hearing Department for a hearing and decision recommending the decision to be imposed in the event that the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline.

Facts: On February 2, 2005, Respondent was arrested for driving under the influence. Respondent's blood alcohol level was determined to be .11/.10%. On February 18, 2005, Respondent was charged with misdemeanor violations of Vehicle Code sections 23152(a) and Vehicle Code section 23152(b), with two prior convictions. The prior convictions, violations of section Vehicle Code 23152(b), occurred on May 29, 1996 and on February 5, 1997. On February 9, 2006, Respondent pled guilty to a misdemeanor violation of Vehicle Code section 23152(b), and admitted the prior convictions. The remaining count was dismissed on motion of the district attorney. The same day, Respondent was sentenced to serve 120 days county jail (stay of execution until March 8, 2006), his California Driver's License was suspended for three years, he was declared a habitual traffic offender and fined \$2,137.00, among other conditions.

Conclusions of Law: The facts and circumstances surrounding Respondent's violation of California Vehicle Code section 23152(b) do not involve moral turpitude, but do involve other conduct warranting discipline. The Respondent acknowledges that by the conduct described herein, he willfully violated Business and Professions Code section 6068(a).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was November 3, 2006.

AGGRAVATING CIRCUMSTANCES.

Multiple acts: By incurring three driving under the influence convictions, Respondent engaged in multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.**Facts Supporting Mitigating Circumstances:**

Candor and cooperation: Respondent has been candid and cooperative with the State Bar during its resolution of this case.

Objective steps demonstrating remorse: Respondent immediately pled guilty to the DUI offenses.

ADDITIONAL MITIGATING CIRCUMSTANCES.

No prior record of discipline: Although the misconduct herein is extremely serious, respondent has had no prior record of discipline since being admitted in 1998.

AUTHORITIES SUPPORTING DISCIPLINE.

Standards for Attorney Sanctions for Professional Misconduct 1.2(b)(ii), 1.2(e)(v), 1.2(e)(vii), 2.6(a), 3.4; *In re Kelley* (1990) 52 Cal.3d 487; and see generally *In Re Silvertown* (2005) 36 Cal.4th 81.

COMPLIANCE WITH CONDITIONS OF PROBATION IN UNDERLYING CRIMINAL MATTERS.

Respondent shall comply with all conditions of his probation that were imposed in the underlying criminal matter, and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the State Bar Office of Probation.

ATTENDANCE AT ABSTINENCE-BASED SELF-HELP GROUP.

Respondent must attend at least four (4) meetings per month of an abstinence-based self help group of his own choosing, including *inter alia*, Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T., S.O.S. Other self-help maintenance programs are acceptable if they include: (1) a subculture to support recovery (meetings) and (2) 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].) If respondent wishes to attend meetings of an abstinence-based self help group that is not specified above, respondent shall obtain the approval of the Office of Probation to the alternative program before attending such meetings. Failure to obtain approval from the Office of Probation may result in respondent not receiving credit for the meetings. The program called

"Moderation Management" is not acceptable because it allows the participant to continue consuming alcohol.

STATE BAR ETHICS SCHOOL.

Respondent has agreed to attend State Bar Ethics School as part of this stipulation; therefore, he may receive Minimum Continuing Legal Education credit toward his required number of MCLE credits.

ELECTION NOT TO REQUEST STATE BAR COURT'S ALTERNATIVE DISCIPLINE PROGRAM.

By signing this stipulation, Respondent acknowledges that he was provided information about the State Bar Court's Alternative Discipline Program; that he was offered the opportunity to request referral to and participation in that program; and that he has elected not to do so.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 23, 2006, the estimated prosecution costs in this matter are approximately \$3272.00. Respondent acknowledges that this figure is an estimate only. 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.

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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 Fact, Conclusions of Law and Disposition.

11/06/06
Date

J. A. Bornstein
Respondent's Signature JONATHAN A. BORNSTEIN
Print Name

11/6/06
Date

Edwin Train Caldwell
Respondent's Counsel Signature EDWIN TRAIN CALDWELL
Print Name

11/6/06
Date

Cydney Batchelor
Deputy Trial Counsel's Signature CYDNEY BATCHELOR
Print Name

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

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In the Matter of Jonathan A. Bornstein	Case number(s): 05-C-01858-PEM
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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.

1. On page 2, Section A(8)--costs to be in equal amounts prior to February 1, for the following membership years: 2008 and 2009.

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.)**

Nov. 16, 2007
Date

Pat McElroy
PAT MCELROY
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 San Francisco, on November 21, 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:

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

**JONATHAN A. BORNSTEIN
LAW OFC EDWIN TRAIN CALDWELL LLP
750 LINDARO ST 3FL
SAN RAFAEL, CA 94901**

**EDWIN TRAIN CALDWELL
LAW OFC EDWIN TRAIN CALDWELL LLP
750 LINDARO ST #320
SAN RAFAEL, CA 94901**

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

CYDNEY BATCHELOR, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **November 21, 2006.**


Laretta Cramer
Case Administrator
State Bar Court