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

| | | |
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| Counsel For The State Bar Diane J. Meyers 1149 S. Hill St. Los Angeles, CA 90015 (213) 765-1000 Bar # 146643 | Case Number (s) 05-O-03770 | (for Court's use) <div align="center"> FILED FEB 11 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div> |
| Counsel For Respondent Susan L. Margolis 2000 Riverside Drive Los Angeles, CA 90039 (323) 953-8996 Bar # 104629 | Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED | |
| In the Matter Of: Frank S. Carleo Bar # 65390 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**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **11** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (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."

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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):
- 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: (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 **87-O-11726**
 - (b) Date prior discipline effective **November 13, 1989**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Former rule 2-111(A)(2) of the Rules of Professional Conduct; and sections 6068(a) and (i) of the Business and Professions Code**
 - (d) Degree of prior discipline **Thirty-day actual suspension, a two-year stayed suspension, and a two-year probation**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
 - (a) State Bar Court case # of prior case: 02-O-12160
 - (b) Date of prior discipline effective: April 25, 2005
 - (c) Rules of Professional Conduct/State Bar Act violations: Section 6103 of the Business and Professions Code
 - (d) Degree of prior discipline: Public reproof
- (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:

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.
- (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.

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- (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

Respondent was suffering from severe health problems at the time of the misconduct, which were treated successfully and are now under control. Respondent demonstrated recognition of wrongdoing by entering into this stipulation, thereby saving the resources of the State Bar.

D. Discipline:

(1) **Stayed Suspension:**

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

- 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 **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of **30 days**.

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(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:

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.
- (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. ****Completion of Ethics School within 6 months prior to the effective date of the Supreme Court order in this matter shall satisfy this condition.**
 - No Ethics School recommended. Reason: Court order in this matter shall satisfy this condition.
- (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:
 - Substance Abuse Conditions
 - Medical Conditions
 - Law Office Management Conditions
 - 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 954-9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 955-9.20, California Rules of Court:** Respondent must comply with the requirements of rule 955-9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 955-9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955-9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

G. SUPPORTING AUTHORITY:

Standard 2.6(a) of the Standards for Attorney Sanctions for Professional Misconduct provides that culpability of a member of a violation of Business and Professions Code 6068 shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Standard 1.7(b) provides that if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

The parties agree that Respondent's misconduct herein did not involve moral turpitude. Further, Respondent's first discipline imposed in 1989, while serious, is remote in time; and his second discipline imposed in 2005, warranted only a public reproof. Thus the parties agree that the mitigating circumstances present outweigh the aggravating factor of Respondent's prior discipline.

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H. MISCELLANEOUS:

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of December 21, 2009, the disciplinary costs in this matter are approximately \$2,047.99. 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 costs of further proceedings.

Attachment language begins here (if any):

Respondent pleads nolo contendere to the following facts and violations with respect to case no. 05-O-03770. Respondent understands that the nolo contendere plea shall be considered the same as an admission of the stipulated facts and of his culpability of the statutes and/or rules specified, for the purposes of this proceeding only, and as otherwise stated in the attached and signed nolo contendere plea form:

Case No. 05-O-03770

FACTS:

1. On August 15, 2002, Respondent filed a complaint in the Los Angeles County Superior Court entitled, *Frank Carleo v. Ralph Lyu, et al.*, case number 02C01282 ("*Carleo I*").
2. On July 28, 2003, Respondent filed three other lawsuits related to *Carleo I* in the Los Angeles County Superior Court entitled, *Frank Carleo v. Shong-Ching Tong, et al.*, case number 03C01167; *Frank Carleo v. Esther Chow, et al.*, case number 03C01168; and *Frank Carleo v. Li Zhao, et al.*, case number 03C01169.
3. On February 3, 2005, a trial setting conference was held in the cases and continued to February 24, 2005. The court ordered Respondent, who was present in court on February 3, 2005, to give notice of the February 24, 2005 conference. Respondent gave notice of the conference, but his notice was defective because it listed the date of the conference as February 25, 2005. As such, when the matter was called by the court on February 24, 2005, all of the defendants were not present, requiring the court to continue the conference again to April 21, 2005 in Division 3. Again, the court ordered Respondent, who was present in court on February 24, 2005, to give notice of the April 21, 2005 conference.
4. On April 20, 2005 at 3:52 p.m., Respondent filed a declaration in the action that he signed under penalty of perjury and dated April 20, 2005. In the declaration, Respondent stated that he would not attend the conference on April 21, 2005 because he was scheduled to represent a client in an administrative hearing. In the declaration, Respondent requested that the court set the trial on a date after September 2005, so that Respondent could file summary judgment motions. Respondent filed a proof of service with the court which represented that he had served his declaration on the parties by mail on April 21, 2005, the day of the conference and the day after the declaration was filed with the Court. None of the defendants or their attorneys were served with a copy of Respondent's declaration dated April 20, 2005, advising that Respondent would not be appearing at the April 21, 2005 trial setting conference.

5. On April 21, 2005, the court held a trial setting conference in the action. Since Respondent was not present, the court continued the conference to June 17, 2005, and on its own motion, scheduled a hearing for June 17, 2005 on an order to show cause for sanctions against Respondent for his failure to appear at the conference. Respondent received notice of the conference and notice that the court was contemplating imposing sanctions against him.

6. On May 25, 2005, counsel for defendants Ralph Lyu and Esther Chow filed a motion for a monetary sanction against Respondent and for dismissal of the action due to Respondent's failure to appear at the trial setting conference (the "motion"). Respondent received notice of the motion, and filed a written opposition to the motion on June 10, 2005.

7. As Respondent did not serve any of the defendants with his declaration dated April 20, 2005, the proof of service submitted by Respondent and filed with the court on April 20, 2005, contained a false statement of fact.

8. On June 21, 2005, the court granted the motion and ordered Respondent to pay a \$1,126.30 sanction to defendants' attorney within 30 days.

9. On June 21, 2005, the court clerk served written notice of the sanction order on Respondent by mail. Respondent received notice of the sanction.

10. Respondent did not report the imposition of the \$1,126.30 sanction to the State Bar of California ("State Bar").

CONCLUSIONS OF LAW:

1. By filing a proof of service with the Court that contained a false statement of fact, Respondent wilfully violated Business & Professions Code section 6068(d).

2. By not reporting the imposition of the \$1,126.30 sanction to the State Bar, Respondent wilfully violated Business and Professions Code section 6068(o)(3).

In the Matter of
Frank S. Carleo

Case number(s):
05-O-03770

A Member of the State Bar

NOLO CONTENDERE PLEA TO STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

Bus. & Prof. Code § 6085.5 Disciplinary Charges; Pleas to Allegations

There are three kinds of pleas to the allegations of a Notice of Disciplinary Charges or other pleading which initiates a disciplinary proceeding against a member:

- (a) Admission of culpability.
- (b) Denial of culpability.
- (c) **Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the member culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admission required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based. (Added by Stats. 1996, ch. 1104.) (emphasis supplied)**

Rule 133, Rules of Procedure of the State Bar of California **STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

(a) A proposed stipulation as to facts, conclusions of law, and disposition must set forth each of the following:

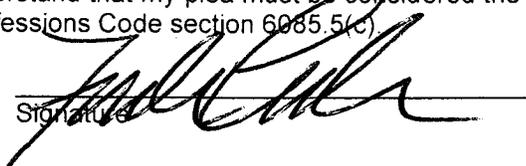
- (5) a statement that Respondent either
 - (i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules of Professional Conduct or
 - (ii) **pleads nolo contendere to those facts and violations. If the Respondent pleads nolo contendere, the stipulation shall include each of the following:**
 - (a) **an acknowledgement that the Respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation; and**
 - (b) **if requested by the Court, a statement by the Deputy Trial Counsel that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter (emphasis supplied)**

I, the Respondent in this matter, have read the applicable provisions of Bus. & Prof. Code § 6085.5 and rule 133(a)(5) of the Rules of Procedure of the State Bar of California. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea must be considered the same as an admission of culpability except as state in Business and Professions Code section 6085.5(c).

Date

1/15/10

Signature



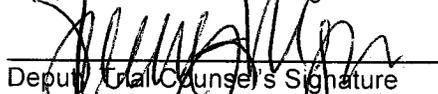
Frank Carleo
Print Name

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| In the Matter of Frank S. Carleo | Case number(s): 05-O-03370 |
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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.

| | | |
|-----------------|---|---------------------------------|
| 1/15/10 Date |  | Frank S. Carleo Print Name |
| 1/19/10 Date |  | Susan L. Margolis Print Name |
| 1/22/10 Date |  | Diane J. Meyers Print Name |

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| In the Matter Of Frank S. Carleo | Case Number(s): 05-O-03770 |
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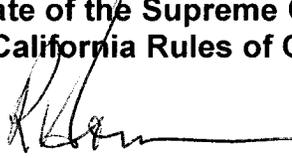
ORDER

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 9.18(a), California Rules of Court.)**

7-10-10
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 February 11, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

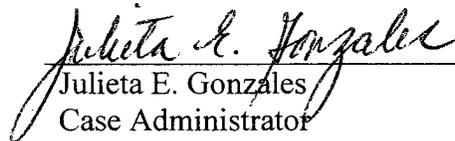
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SUSAN L MARGOLIS ATTORNEY AT LAW
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

Diane J. Meyers, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 11, 2010.



Julieta E. Gonzales
Case Administrator
State Bar Court