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State Bar Court of California  
Hearing Department  
San Francisco

~~CONFIDENTIAL~~

PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES

<p>Counsel For The State Bar</p> <p><b>Mark Hartman</b> Deputy Trial Counsel 180 Howard St., 7th Floor San Francisco, CA 94105 Telephone: (415) 538-2558</p> <p>Bar # 114637</p>	<p>Case Number (s)</p> <p>06-C-10625 06-C-11101 06-C-11128 06-C-11129 08-C-10013</p> <p><b>FILED</b> SEP 15 2008</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>	<p>(for Court's use)</p> <p><b>PUBLIC MATTER</b></p> <p><b>LODGED</b></p> <p>JUN 23 2008</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p><b>Arthur L. Margolis, Esq.</b> Law Office of Margolis &amp; Margolis 2000 Riverside Dr. Los Angeles, CA 90039 Telephone: (323) 953-8996</p> <p>Bar # 57703</p>	<p>Submitted to: <b>Program Judge</b></p> <p><b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of:</p> <p><b>BRIAN M. KEITH</b></p> <p>Bar # 145934</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 **March 15, 1990**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **9** pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

**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 **98-O-02246**
  - (b)  Date prior discipline effective **March 11, 2001**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Section 6106 of the Business and Professions Code and rules 4-100(A), 4-100(B)(3), and 4-100(B)(4) of the Rules of Professional Conduct.**
  - (d)  Degree of prior discipline **18 months' stayed suspension and 2 years' probation, conditioned on 90 days' actual suspension.**
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below:
- (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. **RESPONDENT DID NOT ENGAGE IN BAD FAITH, DISHONESTY, CONCEALMENT, OR OVERREACHING. Respondent did violate section 6068, subdivision (o)(4) of the Business and Professions Code by failing, within 30 days of the time when he knew about the filing of felony charges against him in the criminal case underlying State Bar case number 06-C10625, to report in writing to the State Bar of California about these charges. See page 7.**
- (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. **See page 7.**
- (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 page 7.**

- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**Respondent refused to cooperate in chemical testing in two impaired driving matters in California. See page 8.**

**Respondent failed to appear at arraignment after his arrest for impaired driving in Oregon. See page 8.**

**Respondent refused to take a chemical test when police stopped him for a violation of Vehicle Code section 21200.5 [riding a bicycle while under the influence of alcohol]. The citation was later dismissed. See page 8.**

**Respondent repeatedly violated provisions of his long-term participation agreement with the California Lawyer Assistance Program ("LAP"). See page 8.**

**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. **Respondent has been candid and cooperative with the State Bar except for his failure to timely report the filing of felony charges against him in the criminal case underlying State Bar case number 06-C-10625. See page 8.**
- (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:**

**None**

**ATTACHMENT TO**  
**STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

In the Matter of:                   **Brian M. Keith**

Membership No.:                   **145934**

State Bar Case Nos.:           **06-C-10625**  
  **06-C-11101**  
  **06-C-11128**  
  **06-C-11129**  
  **08-C-10013**

**FACTS**

Respondent admits that the following facts are true.

**Case No. 06-C-10625**

1. On March 13, 2005, respondent caused a traffic collision by rear-ending a car which was stopped at a red light. People in that car sustained injuries.
2. A blood test determined that respondent's blood alcohol level was 0.28 percent (i.e., 3.5 times the legal maximum level of 0.08 percent).
3. On April 26, 2005, respondent was charged in Placer County with felony violations of Vehicle Code sections 23153(a) [driving under the influence causing injury] and 23153(b) [driving with a 0.08 percent blood alcohol causing injury], with additional Vehicle Code section violations of 23578 [special allegations of blood alcohol level of 0.20 percent or higher], 23577 [refusal of chemical test], and 23558 [bodily injury to more than one victim].
4. On May 9, 2006, respondent pled nolo contendere to a felony violation of Vehicle Code section 23153(a). He was sentenced to 16 months in state prison.
5. On July 24, 2006, as a result of the felony conviction, respondent was placed on interim suspension. He has remained on interim suspension since then.

**Case No. 06-C-11101**

6. On February 3, 2005, respondent was arrested by the Folsom Police Department for driving under the influence of alcohol.
7. Respondent refused to take a chemical test. His blood alcohol level at the time is unknown.

8. On May 13, 2006, respondent was charged in Sacramento County with a misdemeanor violation of Vehicle Code section 23152(a) [driving under the influence of alcohol].

9. On October 16, 2006, respondent pled nolo contendere to a misdemeanor violation of Vehicle Code section 23152(a). He was sentenced to 48 hours in jail, was given a suspended sentence of 180 days, and was placed on probation for 4 years.

**Case No. 06-C-11128:**

10. On August 25, 1995, respondent was arrested for driving while under the influence of alcohol in San Diego County.

11. Respondent refused to take a chemical test.

12. On September 5, 1995, respondent was charged in San Diego County with a misdemeanor violation of Vehicle Code section 23152(a) [driving under the influence of alcohol] and 23157(a) [refusal to take a chemical test].

13. On June 6, 1996, the complaint was amended to include a misdemeanor violation of Vehicle Code section 23103(a) [unlawfully driving and operating a vehicle in willful and wanton disregard for the safety of persons and property].

14. On June 6, 1996, respondent pled guilty to misdemeanor violation of Vehicle Code section 23103(a). He was given a stayed suspension of 180 days and was placed on probation for 5 years.

**Case No. 06-C-11129**

15. On December 30, 1995, respondent was arrested for driving while under the influence of alcohol in San Diego County.

16. On January 16, 1996, respondent was charged in San Diego County with misdemeanor violations of Vehicle Code sections 23152(a) [driving under the influence of alcohol] and 23152(b) [driving under the influence of alcohol with a blood alcohol level of 0.08 percent or more].

17. On June 6, 1996, respondent pled guilty to a misdemeanor violation of Vehicle Code section 23152(b). He was given a stayed suspension of 180 days and was placed on probation for 5 years.

**Case No. 08-C-10013**

18. On October 15, 2005, respondent was arrested by the Florence [Oregon] Police Department for driving under the influence of intoxicants.

19. Respondent refused to take a breath test.

20. On November 8, 2005, respondent was charged in Lane County, Oregon with a misdemeanor violation of Oregon Revised Statutes section 813.010 [driving under the influence of intoxicants].

21. On November 13, 2007, respondent pled guilty to a misdemeanor violation of Oregon Revised Statutes section 813.010.

## CONCLUSIONS OF LAW

Respondent admits that he is culpable of the following violations of the State Bar Act.

### Case No. 06-C-10625

1. In case number 06-C-10625, the facts and circumstances surrounding respondent's felony conviction for violating Vehicle Code section 23153(a) involved moral turpitude. Thus, he violated Business and Professions Code section 6106.

### Case Nos. 06-C-11101, 06-C-11128, and 06-C-11129

2. In case numbers 06-C-11101, 06-C-11128, and 06-C-11129, the facts and circumstances surrounding respondent's misdemeanor convictions for alcohol-related offenses did not involve moral turpitude, but did involve other misconduct warranting discipline. Thus, in each case, he violated Business and Professions Code section 6068(a).

### Case No. 08-C-10013

3. In case number 08-C-10013, the facts and circumstances surrounding respondent's misdemeanor conviction for an alcohol-related offense did not involve moral turpitude, but did involve other misconduct warranting discipline.

## AGGRAVATING CIRCUMSTANCES

**Prior Record of Discipline:** Respondent has a prior record of discipline in case number 98-O-02246 ("prior case"). In the prior case, he failed to deposit settlement checks amounting to \$69,542.02 in a client trust account, failed to provide an appropriate accounting, failed to pay client funds promptly upon demand, and misappropriated more than \$45,000.00. In aggravation, he committed multiple acts of wrongdoing. In mitigation, he had no earlier record of discipline and donated time and money to organizations assisting children with special needs. The prior case resulted in an 18-month stayed suspension and a 2-year probation, condition on a 90-day actual suspension.

**Multiple Acts of Misconduct:** Respondent committed multiple acts of misconduct in case numbers 06-C-10625, 06-C-11101, 06-C-11128, 06-C-11129 and 08-C-10013 ("the current cases").

**Harm:** Respondent significantly harmed the people injured in case number 06-C-10625: Wayne Stevenson and Heather and Richard Paull.

**Failure to Report Felony Charges Timely:** Pursuant to Business and Professions Code section 6068, subdivision (o)(4), respondent was required, within 30 days of the time when he knew about the filing of felony charges against him in the criminal case underlying State Bar case number 06-C10625, to report in writing to the State Bar of California about these charges. Respondent failed to do so until his counsel reported them by a letter dated May 1, 2006.

## **ADDITIONAL AGGRAVATING CIRCUMSTANCES**

**Failure to Cooperate in Chemical Testing:** Respondent refused to cooperate in chemical testing in two impaired driving matters in California.

**Failure to Appear at Arraignment in Oregon:** After respondent was released from custody following his initial impaired driving arrest in Oregon, he left the jurisdiction. He did not appear at his arraignment.

**Misconduct Surrounding Case No. 06-C-11101:** After his arrest for the underlying criminal offense in case number 06-O-11101, respondent was cited in another incident. On March 2, 2006, the Folsom Police stopped him for a violation of Vehicle Code section 21200.5 [riding a bicycle while under the influence of alcohol]. He refused to take a chemical test. On October 16, 2006, the citation was dismissed in view of his nolo contendere plea to a misdemeanor violation of Vehicle Code section 23152(a) [driving under the influence of alcohol] in the criminal case underlying State Bar case number 06-C-10625.

**Violations of Participation Agreement With the State Bar LAP:** In December 2006, respondent contacted the State Bar LAP and signed a pre-enrollment evaluation plan. On May 14, 2007, he signed a long-term participation agreement with the LAP. LAP reports show a number of violations, some of which resulted from lack of funds to pay for testing. He had an opportunity to bring his lack of funds to the LAP's attention before the required tests, but did not do so. Now, he has financial assistance from the LAP and is in compliance with the requirements of his participation agreement.

## **MITIGATING CIRCUMSTANCE**

**Candor and Cooperation With the State Bar:** Respondent has been candid and cooperative with the State Bar except for his failure to timely report the felony charges against him in the criminal case underlying State Bar case number 06-O-19625.

## **DATE OF DISCLOSURE OF ANY PENDING INVESTIGATION OR PROCEEDING**

On May 15, 2008, the State Bar faxed a disclosure letter to respondent's counsel. In this letter, the State Bar advised respondent's counsel of any pending investigation or proceeding not resolved by this Stipulation re Facts and Conclusions of Law.

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<p>In the Matter of</p> <p><b>BRIAN M. KEITH,</b> No. 145934,</p> <p>A Member of the State Bar of California.</p>	<p>Case number(s):</p> <p>06-C-10625 06-C-11101 06-C-11128 06-C-11129 08-C-10013</p>
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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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

<u>5/19/08</u> Date	<u><i>Brian M. Keith</i></u> Respondent's Signature	Brian M. Keith Print Name
<u>5/19/08</u> Date	<u><i>Arthur L. Margolis</i></u> For Arthur Margolis Respondent's Counsel Signature	Arthur L. Margolis Print Name
<u>5/15/08</u> Date	<u><i>Mark Hartman</i></u> Deputy Trial Counsel's Signature	Mark Hartman Print Name

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In the Matter Of  <b>BRIAN M. KEITH, No. 145934,</b>  <b>A Member of the State Bar of California.</b>	Case Number(s):  <b>06-C-10625 06-C-11101 06-C-11128 06-C-11129 08-C-10013</b>
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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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

Date

June 23, 2008

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. 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 June 23, 2008, I deposited a true copy of the following document(s):

**CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDERS (Rules Proc. of State Bar, rule 803 (a))**

**STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

**CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR COURT'S ALTERNATIVE DISCIPLINE PROGRAM**

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

by personally delivering such documents to the following individuals at 180 Howard Street, 6<sup>th</sup> Floor, San Francisco, California 94105-1639:

**MARK HARTMAN**  
**BRIAN M. KEITH**

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

**ARTHUR LEWIS MARGOLIS**  
**MARGOLIS & MARGOLIS LLP**  
**2000 RIVERSIDE DR**  
**LOS ANGELES, CA 90039**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **June 23, 2008**.



Case Administrator  
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 December 12, 2008, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING DOCUMENTS

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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:

ARTHUR LEWIS MARGOLIS  
MARGOLIS & MARGOLIS LLP  
2000 RIVERSIDE DR  
LOS ANGELES, CA 90039

- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- by overnight mail at , California, addressed as follows:

- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Mark Hartman, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 12, 2008.

  
George Hue  
Case Administrator  
State Bar Court