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

<p>Counsel For The State Bar</p> <p>Brandon K. Tady Deputy Trial Counsel State Bar of California 1149 South Hill Street Los Angeles, California 90015</p> <p>Bar # 83045</p>	<p>Case Number (s) 07-O-14858</p>	<p>(for Court's use)</p> <p align="center">PUBLIC MATTER</p> <p align="center">FILED <i>[Signature]</i></p> <p align="center">FEB 24 2010</p> <p align="center">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>David. A. Clare 444 West Ocean Blvd., Suite 800 Long Beach, California 90802</p> <p>Bar # 44971</p>	<p>Submitted to: Assigned Judge</p>	
<p>In the Matter Of: MARC RUSSELL LEVINE</p> <p>Bar # 113671</p> <p>A Member of the State Bar of California (Respondent)</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>	

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 **June 13, 1984**.
- (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."
- (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):
- 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: **three (3) billing cycles following the effective date of the Supreme Court's order on this matter.**
(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 Stipulation of Facts and Conclusions of Law.**
- (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. **See attached Stipulation of Facts and Conclusions of Law.**
- (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. **See attached Stipulation of Facts and Conclusions of Law.**
- (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. **See attached Stipulation of Facts and Conclusions of Law.**
- (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 **one (1) 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:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **one (1) year**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 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 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.

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- (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:
 - 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 within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
 No MPRE recommended. Reason:
- (2) **Other Conditions:**
Payment of Sanctions As A Condition of Probation. See Stipulation of Facts and Conclusions of Law.

did not receive these notices and orders from the Superior Court. Respondent learned of the sanctions on or before October 24, 2007 when he wrote a letter to the State Bar stating that he intended to file a motion to vacate the sanctions order.

6. Respondent did not file an appeal of, or a motion to set aside, the Sanctions Order.

7. To date, Respondent has not paid the \$2500 sanctions ordered by the Superior Court.

8. Respondent failed to report the \$2500 sanctions order to the State Bar within 30 days of the time Respondent had knowledge of the imposition of the judicial sanctions. To date, Respondent has not reported the \$2500 court ordered sanctions to the State Bar.

9. On or about May 13, 2008, the State Bar opened a State Bar Investigation ("SBI matter") in case number 07-O-14858, regarding Respondent's failure to pay the court ordered sanction within the prescribed deadline.

10. On or about May 13, 2008, a State Bar investigator wrote to Respondent regarding the SBI matter. Respondent received the letter.

11. On or about June 3, 2008, the State Bar Investigator wrote a second letter to Respondent regarding the SBI matter. Respondent received the letter.

12. On or about June 30, 2008, the State Bar Investigator wrote a third letter to Respondent regarding the SBI matter. Respondent received the letter.

13. Each of the investigator's letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the SBI matter. Respondent did not respond in writing to any of the investigator's letters.

C. STIPULATED CONCLUSIONS OF LAW.

Respondent admits he is culpable of the following violations:

14. By failing to pay the \$2500 in sanctions, Respondent willfully violated Business and Professions Code, section 6103, by wilfully disobeying or violating an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear.

15. By failing to report to the agency charged with attorney discipline, in writing, within 30 days of the time he had knowledge of the imposition of the judicial sanctions of \$2500 against him, Respondent wilfully violated Business and Professions Code, section 6068(o)(3).

16. By failing to respond to the State Bar investigator's letters dated May 13, 2008, June 3, 2008, and June 30, 2008 requesting information from Respondent about the State Bar complaint that he failed to pay the \$2500 court ordered sanctions within the prescribed deadline, Respondent wilfully violated Business and Professions Code, section 6068(i) by failing to cooperate and participate in a disciplinary investigation pending against him.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(6), was February 4, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 1, 2010, the prosecution costs in this matter are \$4920. Respondent further acknowledges should this stipulation be rejected or should relief from the stipulation be granted, the costs in this proceeding may increase due to the cost of further proceedings.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.6 provides the range of discipline for violations of California Business and Professions Code, sections 6068 and 6103 is disbarment to suspension. Respondent's stipulations as to culpability, the aggravating circumstances, and the mitigating circumstances support the level of discipline of one year stayed suspension. This level of discipline is within the range of discipline in Standard 2.6.

AGGRAVATING CIRCUMSTANCES.

Respondent is culpable of multiple acts of misconduct. (Standard 1.2 (b) (ii)). Respondent failed to comply with the Superior Court's order that he pay \$2500 in sanctions, he failed to report the sanctions order to the State Bar within 30 days of the date Respondent knew about the sanctions, and he failed to cooperate with the State Bar in its investigation of the SBI complaint.

MITIGATING CIRCUMSTANCES.

Respondent does not have a prior record of discipline since his admission to practice law on June 13, 1984. (Standard 1.2 (e) (i)).

Respondent was experiencing extreme emotional difficulties including depression in 2007 and for the first part of 2008 caused by domestic strife and extreme financial problems. (Standard 1.2 (e) (iv)). Respondent attributes his failures to attend the CMC and the OSC and his failure to respond to the State Bar's investigator's letters to these extreme emotional difficulties. Respondent's extreme emotional difficulties were not the product of any illegal conduct. Respondent's domestic strife also caused him severe financial problems which continue to the present day including the recent foreclosure on and eviction from his residence. Respondent contends he has not paid the sanctions because he does not have the money to pay them. During this disciplinary proceeding, Respondent provided evidence to the State Bar of his financial inability to pay the sanctions.

OTHER CONDITIONS

Respondent is required to pay \$2500 in sanctions and all accrued interest, if any, to the Superior Court. Respondent must pay the full \$2500 and all accrued interest, if any, not later than 30 days after the effective date of the Supreme Court's order in this matter. This is a condition of Respondent's probation.

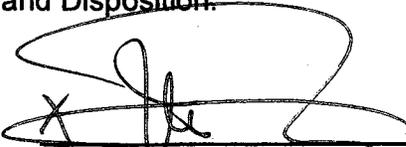
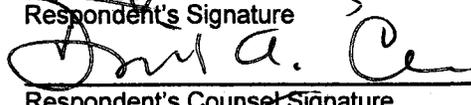
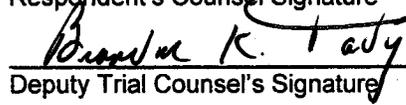
Respondent is required to provide satisfactory proof of payment to the Office of Probation not later than 10 days after he pays the sanctions and all accrued interest, if any. This is a condition of Respondent's probation. Respondent is required to provide to the Office of Probation not later than 10 days after he pays the sanctions and all accrued interest, if any, the original or a copy of the receipt from the Superior Court showing the \$2500 sanctions and all accrued interest, if any, is paid in full. This is a condition of Respondent's probation.

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In the Matter of MARC RUSSELL LEVINE	Case number(s): 07-O-14858
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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.

<u>2.4.10</u> Date	 Respondent's Signature	<u>MARC RUSSELL LEVINE</u> Print Name
<u>2/4/10</u> Date	 Respondent's Counsel Signature	<u>DAVID A. CLARE</u> Print Name
<u>2/9/10</u> Date	 Deputy Trial Counsel's Signature	<u>BRANDON K. TADY</u> Print Name

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In the Matter Of MARC RUSSELL LEVINE	Case Number(s): 07-C-14858
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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.)**

Feb 24, 2010
Date



Judge of the State Bar Court

LUCY ARMENDARIZ

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 February 24, 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 San Francisco, California, addressed as follows:

**DAVID ALAN CLARE
DAVID A CLARE, ATTORNEY AT LAW
444 W OCEAN BLVD STE 800
LONG BEACH, CA 90802**

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 fax transmission, at fax number . No error was reported by the fax machine that I used.

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:

BRANDON K. TADY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 24, 2010.



Bernadette C.O. Molina
Case Administrator
State Bar Court