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

<p>Counsel For The State Bar</p> <p>PAUL T. O'BRIEN 1149 S. HILL STREET LOS ANGELES, CA 90015-2299 (213) 765-1378</p> <p>Bar # 171252</p>	<p>Case Number(s): 09-C-12413-RAP</p>	<p>For Court use only</p> <p>FILED</p> <p>JUN 03 2011 <i>ll</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>
<p>In Pro Per Respondent</p> <p>WALTER R. LUOSTARI 1117 FOOTHILL BLVD., #A LA CANADA, CA 91011 (818) 790-2044</p> <p>Bar # 94326</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p>DISBARMENT</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: WALTER R. LUOSTARI</p> <p>Bar # 94326</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 December 16, 1980.
- (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 resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (9) 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."

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs to be awarded to the State Bar.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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**
- (a) State Bar Court case # of prior case 93-O-16031
 - (b) Date prior discipline effective January 5, 1997
 - (c) Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code section 6068(c) and rules 3-110(A), and 4-100(B)(3) of the Rules of Professional Conduct
 - (d) Degree of prior discipline Private Reprimand
 - (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.
- (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.

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- (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. Respondent testified truthfully in a deposition, cooperated fully with the State Bar's investigation surrounding his conviction, and has demonstrated his cooperation further by entering into this stipulation of facts, conclusions of law, and discipline to be imposed.
- (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. See below, Additional Mitigating Circumstances.
- (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 suffered from numerous traumatic experiences during his childhood, teens and early adulthood, including: parental neglect and physical and emotional abuse; the deaths of several family members and close friends, including his grandmother and younger brother; physical exploitation by an older neighbor; bearing witness to his mother interrogating his sister over a suspected incestuous relationship with their father; and observing the violence and shock of war while serving in Vietnam. Respondent's extreme emotional difficulties contributed to an honest but unreasonable belief that viewing the images might help him understand and resolve emotional issues which seemed to arise from his own disturbing past. Respondent did not share the prohibited images and attempted to permanently delete the images prior to knowing of the government's investigation, making them effectively irretrievable; they remained, however, on his various computers' hard drives. Respondent, in connection with his criminal probation, has sought extensive therapy; his therapist has provided evidence to the State Bar that Respondent has made significant progress in his therapy, has achieved a greater understanding of the emotional and psychological trauma he has suffered, gained a true appreciation nature of the misconduct, and does not pose a threat of recidivism.

Respondent has provided several letters from lawyers and other respected members of the community who have known him for many years, who are familiar with the details of his misconduct, and who believe he is of good character, providing many examples of pro bono activities while practicing law, as well as community involvement. The parties further stipulate, however, that this evidence does not constitute "an extraordinary demonstration of good character of the member attested to a wide range of references in the legal and general communities." [Standard 1.2(e)(vi)]

D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 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.

- (2) **Restitution:** Respondent must make restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____. If the Client Security Fund has reimbursed _____ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than _____ days from the effective date of the Supreme Court order in this case.

- (3) **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: WALTER R. LUOSTARI

CASE NUMBER(S): 09-C-12413-RAP

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 09-C-12413 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.
2. On April 30, 2010, Respondent was convicted of violating PC 311.11(a), was sentenced to 180 days in custody and placed on formal probation for a period of three years.
3. On June 10, 2010, the Review Department issued an order placing Respondent on Interim Suspension, which became effective on June 9, 2010.
4. On December 7, 2010, the Review Department issued an order referring the matter to the Hearing Department on the following issues: whether the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline, and if so, the discipline to be imposed.
5. On or about December 28, 2011, Respondent filed an Answer to the Notice of Hearing Re: Conviction. Respondent contends that he had an honest but mistaken belief that viewing child pornography constituted a legitimate educational or scientific pursuit, insofar as he was "psychologically and emotionally exploring and attempting to understand human malice and perverse acts of human cruelty, including but not limited to atrocities committed in war time, sometimes in an effort to

understand and get to the root of his belief that he was possibly a victim of childhood abuse in order to overcome the effects of such abuse and experiences in Vietnam.”

FACTS:

6. In October 2006, ICE began an investigation of a website providing hardcore child pornography to subscribers throughout the United States. Pursuant to the investigation, Respondent was identified by ICE as an individual who made multiple purchases to the child pornography website under investigation.

7. On October 18, 2006, at 9:45 p.m., ICE agents and officers from the Glendale Police Department executed a State of California search warrant at Respondent’s residence. Pursuant to the warrant, agents seized three laptop computers, three desktop computers, and various computer media, including thumb drives and compact disks.

8. The government’s computer forensics examiner found illegal child pornography had been stored on six separate pieces of media, including on Respondent’s desktop computer, two laptop computers, two zip disks, and a thumb drive. It was determined that 450 images of prepubescent children, many engaged in explicit sexual acts, had been stored on Respondent’s various digital storage devices.

9. Respondent used his (personal) check card on multiple occasions, charging \$79.99 for access to illegal child pornography websites, intermittently, from 2003 through 2006. Respondent did not hide his identity when purchasing access to or in accessing the websites

CONCLUSIONS OF LAW:

10. The facts and circumstances surrounding the above-described violation(s) involved moral turpitude.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was April 20, 2011.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 3.2 provides that a final conviction of a member of a crime involving moral turpitude shall result in disbarment unless the mitigating circumstances clearly predominate.

The Supreme Court has provided guidance in determining whether moral turpitude is present in the facts and circumstances surrounding a conviction of a public offense that does not involve the practice of law: "Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine societal norms, that knowledge of the attorneys' conduct would be likely to undermine public confidence in and respect for the legal profession." *In re Lesansky* (2001) 25 Cal.4th 11

COSTS OF DISCIPLINARY PROCEEDINGS.



Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 20, 2011, the prosecution costs in this matter are \$4,569. 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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In the Matter of: WALTER R. LUOSTARI	Case number(s): 09-C-12413-RAP
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>5-20-11</u> Date	 Respondent's Signature	<u>WALTER R. LUOSTARI</u> Print Name
<u>5/20/11</u> Date	 Deputy Trial Counsel's Signature	<u>Paul T. O'Brien</u> Print Name

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In the Matter of: WALTER R. LUOSTARI	Case Number(s): 09-C-12413-RAP
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DISBARMENT 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 5.58(E) & (F), 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.)**

Respondent Walter R. Luostari is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Date

06-01-11


RICHARD A. PLATEL
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 June 3, 2011, 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:

WALTER R LUOSTARI
BURLISON & LUOSTARI
1117 FOOTHILL BLVD #A
LA CANADA CA 91011

WALTER R LUOSTARI
1503 COLUMBIA DRIVE
GLENDALE CA 91205

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:

PAUL O'BRIEN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 3, 2011.



Angela Carpenter
Case Administrator
State Bar Court