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State Bar Court of California Hearing Department San Francisco ALTERNATIVE DISCIPLINE PROGRAM		
Counsel For The State Bar Heather E. Abelson Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105-1639 (415) 538-2357 Bar # 243691	Case Number (s) 10-C-08329-LMA 12-C-17749 14-C-01846	(for Court's use) PUBLIC MATTER FILED JAN 20 2015 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Anthony P. Radogna Law Offices of Anthony Radogna 981 Corporate Center Dr., Ste. 108 Pomona, CA 91768 (909) 622-5049 Bar # 261859	Submitted to: Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: JOSEPH HENRY MARMAN Bar # 129517 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 **September 15, 1987**.
- (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, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline 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 **10** pages, excluding 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."



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- (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 [see Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) ☒ **Prior record of discipline**
- (a) ☒ State Bar Court case # of prior case **98-O-01683**. See "Facts Supporting Aggravating Circumstances" in the attachment hereto at p. 8.
- (b) ☒ Date prior discipline effective **September 7, 2000**
- (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code section 6068(k) [failure to comply with probation terms]**. See "Facts Supporting Aggravating Circumstances" in the attachment hereto at p. 8.
- (d) ☒ Degree of prior discipline **30-days actual suspension**
- (e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below:
See "Facts Supporting Aggravating Circumstances" in the attachment hereto at p. 8.
- (2) ☐ **Dishonesty:** Respondent's misconduct was intentional, 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. See "Facts Supporting Aggravating Circumstances" in the attachment hereto at p. 8.
- (5) ☒ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. See "Facts Supporting Aggravating Circumstances" in the attachment hereto at p. 8.
- (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 "Facts Supporting Aggravating Circumstances" in the attachment hereto at p. 8.
- (8) ☐ **Restitution:** Respondent failed to make restitution.
- (9) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. 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, the public, or the administration of justice.
- (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 with a good faith belief that was honestly held and reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:

JOSEPH HENRY MARMAN

CASE NUMBERS:

10-C-08329-LMA; 12-C-17749; 14-C-01846

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. 10-C-08329 (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 September 1, 2010, the Shasta County District Attorney filed a criminal complaint in the Shasta County Superior Court, case no. 10-06023, charging respondent with one count each of violation of Vehicle Code section 23152(a) [Driving Under the Influence], a misdemeanor, Vehicle Code section 23152(b) [Driving With 0.08 or More Blood Alcohol], a misdemeanor, Vehicle Code section 22349(b) [Exceeding Maximum Speed Limit of 55 MPH], an infraction, and Vehicle Code section 21460(a) [Cross to the Left of Double Solid Yellow Lines], an infraction.

3. On October 25, 2010, the court entered respondent's plea of nolo contendere to one count of violation of Vehicle Code section 23152(b) [Driving With 0.08 or More Blood Alcohol], a misdemeanor, and based thereon, the court found respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining counts in the furtherance of justice.

4. On October 25, 2010, the court sentenced respondent to 48 hours in jail with credit for time served and to be served consecutive to any other sentence, and ordered respondent to report to Shasta County Jail within 7 days of sentencing. The court also placed respondent on a conditional, revocable community release for a period of 36 months. The court ordered that respondent attend a DUI program and victim impact panel ("VIP"), obey all laws, pay fines and fees totaling \$2,184, as well as other conditions.

5. On February 28, 2014, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

6. On July 11, 2010, at approximately 9:29 p.m., a sheriff, from the Shasta County Sheriff's Department, pulled respondent over after he observed respondent's pickup drifting. The sheriff observed respondent driving 40 miles per hour ("mph") in the posted 55 mph zone and then accelerating to 65 mph. The sheriff further observed the passenger side tire enter the gravel shoulder, and the driver's side tire cross the double yellow lane into oncoming traffic.

7. The sheriff noted that, upon approaching respondent's vehicle, he smelled alcohol emanating from respondent's vehicle.

8. Respondent admitted to the sheriff that he had two glasses of wine at a PG&E camp two hours earlier. The sheriff then contacted California Highway Patrol ("CHP") to further evaluate respondent.

9. Approximately 45 minutes later, CHP arrived on the scene. The responding CHP officer noted that respondent's eyes were red and watery, his speech was slow and slurred, and the odor of alcohol was present on his breath and person.

10. Respondent told the officer that he had consumed three glasses of wine earlier in the evening.

11. The officer performed field sobriety tests, all of which respondent failed.

12. The officer performed two preliminary alcohol screening breath tests to measure the alcohol content of respondent's breath. The test results showed respondent's blood alcohol content was .126 and .131.

13. Respondent was then arrested and transported to Shasta Regional Medical Center where a sample of respondent's blood was taken. The blood test results showed respondent's blood alcohol content was .11.

14. Respondent was then booked into Shasta County jail on the charge of violating Vehicle Code section 23152(a).

CONCLUSIONS OF LAW:

15. The facts and circumstances surrounding the above-described violation did not involve moral turpitude but did involve other misconduct warranting discipline.

Case No. 12-C-17749-PEM (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

16. 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.

17. On September 28, 2012, the Placer County District Attorney filed a criminal complaint in the Placer County Superior Court, case no. 62-116967, charging respondent with one count of violation of Penal Code section 243(e)(1) [Battery], a misdemeanor.

18. On March 15, 2013, the Placer County District Attorney amended the criminal complaint by replacing the initial charge of one count of violation of Penal Code section 243(e)(1) [Battery], a misdemeanor, with one count of violation of Penal Code section 415(1) [Fighting in Public], a misdemeanor.

19. On March 15, 2013, the court entered respondent's plea of nolo contendere to one count of violation of Penal Code section 415(1) [Fighting in Public], a misdemeanor, and based thereon, the court found respondent guilty of that count.

20. On March 15, 2013, the court sentenced respondent to one day in jail, with credit for time served, and placed respondent on conditional probation for a period of three years. The court ordered that respondent complete 20 hours in an anger control program, serve 20 hours of community service, and pay fines and fees of \$600, as well as other conditions.

21. On March 15, 2013, a criminal protective order was also issued against respondent, ordering, amongst other things, that respondent have no personal, electronic, telephonic or written contact with respondent's victim (hereafter "Victim") for three years from the date of the order.

22. On February 28, 2014, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

23. On August 31, 2012, at approximately 8:14 p.m., Placer County Sheriff's Department responded to a possible domestic violence incident. At the scene, officers interviewed Victim's son who reported that Victim had been battered by respondent. Victim's son told the officers that respondent and Victim had argued in front of Victim's house, and that he heard slapping sounds. Victim's son also stated that he asked Victim what had happened and she told him that respondent had grabbed her by the arm, threw her onto the ground and slapped her.

24. Officers also interviewed Victim at the scene. Victim told the officers that she had been dating respondent for approximately 4 years. Victim also stated that she and respondent had argued over a trailer they had purchased. Victim stated that respondent barged into her home, she told him to leave, and respondent then pulled her by the arm outside of the house. Victim stated that respondent held her against the carport wall with both hands on her upper arms, yelled at her, and shook her. Victim stated that she escaped from respondent's grasp and came back into the house. Victim stated that respondent followed Victim into her house, pushed her to the ground, sat on her stomach, and slapped her repeatedly in the face. Victim then stated that respondent got off of her stomach and left her home.

25. One of the responding officers noted hand prints and swelling on Victim's cheeks, and small bruises on Victim's inner upper left arm.

26. Respondent was arrested at his home and booked into Placer County jail on the charge of violating Penal Code section 273.5(a) [Willful Infliction of Corporal Injury]. After being given his Miranda warnings, respondent told officers that Victim had destroyed his trailer, and that he wanted her share of the money for the trailer. Respondent claimed that Victim had threatened to call respondent's

mother and tell her that respondent was a "faggot." Respondent admitted to having a few alcoholic beverages before going over to Victim's home. Respondent also admitted that he confronted Victim at the front door, grabbed her by the arm, took her to the carport, and said "knock this shit off, let it go, leave my family out of it." Respondent claimed that he then let Victim go, and that Victim then walked back into the home and fell down. Respondent claimed that he tried to get Victim's son out of his room to see how Victim was acting but he would not come out of his room. Respondent claimed that he then returned to the living room where Victim was still lying on the floor. Respondent admitted that he sat on Victim's stomach, held her to the ground and told her "you are being stupid about this." Respondent claimed that he then got up and left Victim's home. Respondent also told officers he could not recall whether he slapped Victim or not.

27. Respondent continued to have personal and electronic contact with Victim through at least March 2014.

28. Respondent never sought relief from the criminal protective order.

CONCLUSIONS OF LAW:

29. The facts and circumstances surrounding the above-described violation did not involve moral turpitude but did involve other misconduct warranting discipline.

Case No. 14-C-01846 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

30. 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.

31. On October 24, 2006, the Placer County District Attorney filed a criminal complaint in the Placer County Superior Court, case no. 62-64732, charging respondent with one count of violation of Vehicle Code section 23103(a) [Reckless Driving], a misdemeanor.

32. On February 14, 2007, the Placer County District Attorney amended the criminal complaint by adding a charge of violation of Vehicle Code section 23109(c) [Speed Contest], a misdemeanor.

33. On February 14, 2007, the court entered respondent's plea of nolo contendere to one count of violation of Vehicle Code section 23109(c) [Speed Contest], a misdemeanor, and based thereon, the court found respondent guilty of that count.

34. On February 14, 2007, the court sentenced respondent to two days in jail, and placed respondent on conditional probation for a period of three years. The court ordered that respondent pay fines and fees of \$1,112.50, as well as other conditions.

35. On October 2, 2014, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

36. On September 7, 2006, California Highway Patrol arrested respondent for violation of Vehicle Code section 23103(a) [Reckless Driving], a misdemeanor.

CONCLUSIONS OF LAW:

37. The facts and circumstances surrounding the above-described violation did not involve moral turpitude but did involve other misconduct warranting discipline.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has three prior disciplinary matters. In respondent's first disciplinary matter, case no. 92-O-13001 (92-O-17924, 93-O-10249, 93-O-10251, 93-O-10252, 93-O-16441), respondent received 60-days actual suspension, two-years stayed suspension, and 4-years probation, effective July 14, 1995, for failing to perform legal services with competence, failing to deposit client funds in trust and engaging in moral turpitude in multiple client matters, in violation of Rules of Professional Conduct rules 3-110(A) and 4-100(A), and Business and Professions Code section 6106.

In respondent's second disciplinary matter, case no. 95-O-15064 (97-O-14302), respondent received 14-days stayed suspension and one-year probation, effective April 25, 1998, for practicing law while suspended and for failing to adhere to probation conditions stemming from his first discipline in case no. 92-O-13001, in violation of Business and Professions Code sections 6068(a), 6125, 6126 and 6068(k).

In respondent's third disciplinary matter, case no. 98-O-01683, respondent was placed on 30-days actual suspension, 90-days stayed suspension and one-year probation, effective September 7, 2000, for failing to comply with probation conditions stemming from his second discipline in case no. 95-O-15064, in violation of Business and Professions Code section 6068(k). Respondent's three prior disciplinary matters constitute an aggravating factor pursuant to Standard 1.5(a).

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent was convicted in three separate cases of three misdemeanor violations. Respondent's multiple convictions constitute an aggravating factor pursuant to Standard 1.5(b).

Harm (Std. 1.5(f)): Respondent's conduct caused Victim to suffer swelling and bruising on her cheeks and arms. Respondent's physical injury to Victim constitutes an aggravating factor pursuant to Standard 1.5(f).

Indifference (Std. 1.5(g)): Respondent violated the terms of his criminal protective order by remaining in personal and electronic contact with Victim. Further, respondent's fighting in public violated the terms of his probation from the DUI case because he was ordered to obey all laws for three years. Respondent's violations of the terms of his criminal protective order and criminal probation demonstrate indifference toward atonement for his misconduct, and constitute an aggravating factor pursuant to Standard 1.5(g).

COSTS OF DISCIPLINARY PROCEEDINGS.



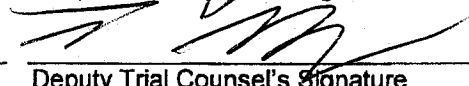
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 14, 2014, the prosecution costs in this matter are \$4,357. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: JOSEPH HENRY MARMAN	Case number(s): 10-C-08329-LMA; 12-C-17749; 14-C-01846
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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>10/21/2014</u> Date	 Respondent's Signature	<u>Joseph Henry Marman</u> Print Name
<u>10-27-14</u> Date	 Respondent's Counsel Signature	<u>Anthony P. Radogna</u> Print Name
<u>10/30/14</u> Date	 Deputy Trial Counsel's Signature	<u>Heather E. Abelson</u> Print Name

(Do not write above this line.)

In the Matter of:
JOSEPH HENRY MARMAN

Case Number(s):
10-C-08329-LMA; 12-C-17749; 14-C-01846

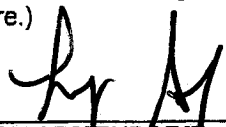
ALTERNATIVE DISCIPLINE PROGRAM ORDER

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 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

Jan 29, 2015
Date


LUCY ARMENDARIZ
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 San Francisco, on January 20, 2015, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

☒ By personally delivering a copy of said document(s) to:

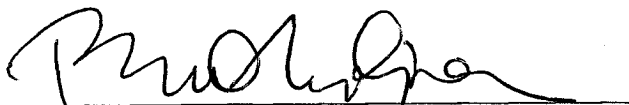
HEATHER E. ABELSON
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

JOSEPH H. MARMAN
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

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

ANTHONY P. RADOGNA
LAW OFFICES OF ANTHONY RADOGNA
1 PARK PLZ STE 600
IRVINE, CA 92614

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 20, 2015.



Bernadette Molina
Case Administrator
State Bar Court