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State Bar Court of California
Hearing Department
San Francisco
STAYED SUSPENSION

<p>Counsel For The State Bar</p> <p>Sherrie B. McLetchie Deputy Trial Counsel 180 Howard Street San Francisco, California 94105 (415)538-2297</p> <p>Bar # 85447</p>	<p>Case Number(s):</p> <p>11-C-10792-LMA</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED <i>RW</i></p> <p>JAN 04 2012</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Doron Weinberg Law Offices of Doron Weinberg 523 Octavia Street San Francisco, California 94102 (415)431-3472</p> <p>Bar # 46131</p>	<p>Submitted to: <i>Settlement Judge</i></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of:</p> <p>CHERYL A. LEE</p> <p>Bar # 193595</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> <p>kwiktag® 018 044 578</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, 1997.
- (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.

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- (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."
- (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 are added to membership fee for calendar year following effective date of discipline.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: two billing cycles following the effective date of the Supreme Court order. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are 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.

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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. Respondent has no prior record of discipline for approximately nine years of practice prior to the current misconduct.
- (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. During the time the company initiated the pattern of underpayment in 2006, respondent was employed full-time in another job which included frequent out-of-town travel. Moreover, during the time of the misconduct, she was undergoing multiple courses of in Vitro Fertilization.



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- (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. Respondent has provided five character letters from two California lawyers, a former bank manager and friend, and the Managing Director from her former employer.
- (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

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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 two (2) years, 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:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> 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 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason: .
- (2) Other Conditions:

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ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: CHERYL A. LEE, SBN 193595
CASE NUMBER(S): 11-C-10792-LMA

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 11-C-10792-LMA (Conviction Proceedings)

FACTS:

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 8, 2011, Respondent was convicted of violating section 2118 of the Unemployment Insurance Code.
3. On June 9, 2011, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department.
4. On November 29, 2006, the Applied Underwriters submitted a suspected fraudulent claim form to the California Department of Insurance reporting fraudulent activity involving the insured, The Posh Bakery Operating Company, Inc., ("PBOC") located in Santa Clara, California.
5. Respondent was the owner, Chief Executive Officer, and on two occasions filed legal actions on behalf of PBOC. During the investigation, it was discovered that PBOC --- run by respondent; her husband and PBOC founder, Jeffrey Ottoveggio; and PBOC Controller, Bruce Campbell --- was under-reporting the number of hours employees were working in order to affect how the company's premium for workers' compensation insurance was determined.
6. In addition, during October 2006 through May 2008, the Department of Insurance discovered that payroll was being reported under businesses in Nevada under the names of delivery truck drivers that were employed by PBOC.
7. Respondent was given the ownership and presidency of PBOC by her husband ~~as a gift~~ ^{as}

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when they married in 2005. During the period when the improper accountings were initiated, respondent had a limited role in the day-to-day operations of the company. She worked full-time at an unrelated job, which required frequent business travel, and was undergoing a series of courses of In Vitro Fertilization procedures.

8. On or about April 13, 2010, a Felony Complaint was filed in Santa Clara County Superior Court against respondent; her husband and PBOC founder, Jeffrey Ottovaggio; and PBOC Controller, Bruce Campbell, with multiple felony counts involving activity commonly known as worker's compensation premium fraud.

9. On April 8, 2011, respondent pled no contest to an amended complaint of violating section 2118 of the Unemployment Insurance Code, a misdemeanor, for failing to withhold or pay over taxes. She was placed on court probation for one year and ordered to pay restitution in the following approximate amounts and payees: \$339,722 to EDD; \$248,421 to Applied Underwriter; and \$110,440 to First Comp/Endurance Reinsurance Corporation of America.

10. By October 14, 2011, respondent had paid full restitution.

11. On October 14, 2011, respondent successfully completed her probation and her probation was terminated early.

CONCLUSION OF LAW:

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

PENDING PROCEEDINGS.

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

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 3.4 provides that final conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime's commission but which does involve other misconduct warranting discipline shall result in a sanction as prescribed under part B of these standards appropriate to the nature and extent of the misconduct found to have been committed by the member.

In Re Brown on Discipline (1995) 12 Cal.4th 205, 208, the attorney was convicted of three misdemeanor counts of violating section 2118 of the Unemployment Insurance Code. The State Bar Court Review

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Department issued an order directing the Hearing Department to determine whether the attorney's convictions involved moral turpitude or other misconduct warranting discipline and, if so, to recommend the discipline imposed. (*Id.* at 214.) Following a two day trial, the Hearing Department issued a decision ordering that no discipline be imposed and that the action be dismissed. (*Id.*) The State Bar appealed. The Review Department reversed the order and remanded the matter to the Hearing Department for recommendation as to the appropriate sanction. (*Id.*) In the Hearing Department, the court received additional evidence and issued a recommendation that the attorney be privately reprimanded. (*Id.*) Again, the State Bar appealed. The Review Department rejected the hearing judge's recommendation as to discipline and ordered that respondent be publicly reprimanded. (*Id.* at 215.) On its own motion, the Supreme Court granted review to determine the adequacy of the public reprimand as discipline for the attorney's convictions. (*Id.*) The Supreme Court held that the public reprimand was inadequate discipline for the misconduct underlying the attorney's conviction and ordered that the attorney be suspended from the practice of law for 60 days actual. (*Id.* at 224.)

In this instance, respondent did not withhold amounts from her employees' paychecks and misappropriate the funds for her personal use. Respondent was not solely responsible for the acts of misconduct.

COSTS OF DISCIPLINARY PROCEEDINGS.

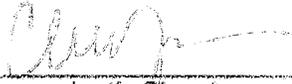
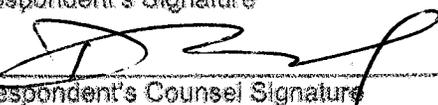
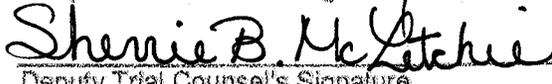
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 2, 2011, the prosecution costs in this matter are \$6,440.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

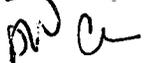
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In the Matter of: CHERYL A. LEE SBN 193595	Case number(s): 11-C-10792-LMA
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SIGNATURE OF THE PARTIES

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>12/4/11</u> Date	 Respondent's Signature	Cheryl A. Lee Print Name
<u>12/6/11</u> Date	 Respondent's Counsel Signature	Doron Weinberg Print Name
<u>12/6/11</u> Date	 Deputy Trial Counsel's Signature	Sherrie B. McLetchie Print Name



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In the Matter of: CHERYL A. LEE SBN 193595	Case Number(s): 11-C-10792-LMA
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STAYED SUSPENSION 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.)

Date

Jan 3, 2012


PAT E. McELROY
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 4, 2012, 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:

DORON WEINBERG
523 OCTAVIA ST
SAN FRANCISCO, CA 94102

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

SHERRIE B. McLETCHIE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 4, 2012.



Bernadette C.O. Molina
Case Administrator
State Bar Court