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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>STAYED SUSPENSION</b>		
Counsel For The State Bar  Kimberly G. Anderson State Bar of California 1149 S. Hill Street Los Angeles, CA 90015  Bar # 150359	Case Number(s): 11-C-11163 11-C-11164 11-C-11166	For Court use only  <div style="text-align: center; font-weight: bold; font-size: 1.2em;">PUBLIC MATTER</div>  <div style="text-align: center; font-weight: bold; font-size: 1.5em;">FILED </div> JUN 13 2011  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent  James A. Burton Mower Carreon & Desai, LLP Irvine, CA 92618  Bar # 149253	Submitted to: <b>Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  STAYED SUSPENSION; NO ACTUAL SUSPENSION  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: James A. Burton  Bar # 149253  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 December 4, 1990.
- (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 12 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 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: Costs to be paid in equal amounts prior to February 1 for the following three 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.
- (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.

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- (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. See Stipulation Attachment at page 11 (Attachment page 5).
- (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. See Stipulation Attachment at page 11 (Attachment page 5).
- (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 Stipulation Attachment at page 11 (Attachment page 5).
- (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. See Stipulation Attachment at page 11 (Attachment page 5).
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances**

Although the misconduct in this matter is serious, Respondent has no prior record of discipline since being admitted to practice law in 1990.

**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 three (3) 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:**



3. On April 5, 2011, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: 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 violation of Vehicle Code, section 14601.2(a) involved moral turpitude or other misconduct warranting discipline.

#### **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.

#### **FACTS:**

##### **Case No. 11-C-11163:**

1. On May 22, 2004 at approximately 12:20 a.m., Respondent was traveling 55-60 miles per hour in violation of the 40 miles per hour posted speed limit. Respondent also drove his vehicle over solid double yellow lines and straddle two lanes. Officer J. Jones of the Laguna Beach Police Department executed a traffic stop of the vehicle. Officer Jones smelled a strong odor of alcohol coming from Respondent's vehicle and noticed he had bloodshot, watery eyes, his pupils were dilated and his speech was slurred.
2. Officer Jones began to ask Respondent questions, but Respondent was not cooperative. Officer Jones conducted field sobriety tests.
3. After conducting the field sobriety tests, Officer Jones places Respondent under arrest. Respondent agreed to take a breath test, but when it came time for Respondent to blow in the machine he did not do so. Respondent then agreed to take a blood test. Respondent's blood alcohol concentration was .268/.265.
4. On June 29, 2004, Respondent was charged in the case entitled *People of the State of California v. James Adam Burton*, Orange County Superior Court Case No. 04HM05244 with driving under the influence of alcohol and driving with a blood alcohol concentration in excess of .08 in violation of Vehicle Code, sections 23152(a) and 23152(b), and driving on a suspended license in violation of Vehicle Code, section 14601.2(a). The complaint also alleged that Respondent's blood alcohol concentration was in excess of .20 within the meaning of Vehicle Code, section 23578, and that Respondent had a prior conviction for violating Vehicle Code, section 23152(b) on May 6, 2004.
5. Respondent did in fact have a prior conviction for violating Vehicle Code, section 23152(b) on May 6, 2004 in the case entitled *of the State of California v. James Adam Burton*, Orange County Superior Court Case No. 04HM0002. In that case, Respondent was arrested on February 13, 2004, and was driving a motor vehicle with a blood alcohol concentration of .24/.24. Respondent's May 22, 2004 arrest constituted a violation of his probation in the case where he was convicted on May 6, 2004.
6. On July 12, 2004, Respondent pled guilty to violations of Vehicle Code, sections 23152(a) and 23152(b). The court dismissed the Vehicle Code, section 14601.2(a) violation. Respondent admitted that he had previously been convicted of driving under the influence. The court

subsequently placed Respondent on summary probation for three years. The court also ordered Respondent violate no laws, that Respondent not drive without a valid license and insurance, that Respondent not drive a motor vehicle with any measurable amount of alcohol in his system, among other conditions. Respondent was also ordered to complete an 18-month SB38 Multiple Offender alcohol program concurrent to his completion of the AB541 alcohol program in his prior driving under the influence case.

7. On December 17, 2007, Respondent's probation was completed.

**Case No. 11-C-11164:**

8. On December 21, 2007, at approximately 7:14 p.m., Officer J. Farris of the Laguna Beach Police Department executed a traffic stop of Respondent's vehicle, following Respondent's hit and run involving a collision with another vehicle. Respondent rear-ended the other vehicle due to his intoxication, causing some property damage to the vehicle.
9. Officer Farris observed Respondent exiting his vehicle and believed Respondent was impaired. Officer Farris asked Respondent if he had anything to drink. Respondent admitted to drinking alcohol, and admitted to being involved in the collision.
10. Respondent was arrested for driving under the influence of alcohol and hit and run property damage.
11. Respondent submitted to a breath test and the blood alcohol concentration was .21/.20.
12. On January 25, 2008, Respondent was charged in the case entitled *People of the State of California v. James Adam Burton*, Orange County Superior Court Case No. 08HM00664 with driving under the influence of alcohol and driving with a blood alcohol concentration in excess of .08 in violation of Vehicle Code, sections 23152(a) and 23152(b), driving on a suspended license in violation of Vehicle Code, section 14601.2(a), and hit and run property damage in violation of Vehicle Code, section 20002(a). The complaint also alleged that Respondent's blood alcohol concentration was in excess of .20 within the meaning of Vehicle Code, section 23578, Respondent had two prior driving under the influence convictions on May 6, 2004 and May 21, 2004, and Respondent had a prior conviction for driving on a suspended license on January 21, 2005.
13. On March 27, 2008, Respondent pled guilty to all of the charges alleged in the case entitled *People of the State of California v. James Adam Burton*, Orange County Superior Court Case No. 08HM00664. He also admitted all of the prior allegations and that his blood alcohol concentration exceeded .20. Respondent was placed on formal supervised probation for five years. Respondent was ordered to serve 180 days in Jail, but the sentence was stayed pending his completion in the Orange County DUI Court Program, which is a voluntary program, which includes regular court appearances before a superior court judge, drug and alcohol testing and counseling, and attendance at AA meetings on a multiple times per week basis. Respondent entered the program March 27, 2008 and successfully completed and graduated from the program on June 29, 2009. Respondent continues to remain on probation in Case No. 08HM00664. As conditions of his probation, Respondent is to violate no laws, not to drive without a valid license and insurance, and not drive to motor vehicle with any measurable amount of alcohol in his system, among other conditions.

**Case No. 11-C-11166:**

14. On October 24, 2004 at approximately 6:45 a.m., Officer D. Germaine of the Laguna Beach Police Department executed a traffic stop of Respondent's vehicle due to expired registration tags. At the time, Respondent knew he was driving with a suspended license due to a driving under the influence conviction in violation of Vehicle Code, section 14601.2(a).
15. On April 21, 2005, Respondent pled guilty to a violation of Vehicle Code, section 14601.2(a) in the case entitled *People of the State of California v. James Adam Burton*, Orange County Superior Court Case No. 04HM09006. The court placed Respondent on summary probation for three years. The court also ordered that Respondent violate no laws, that Respondent not drive without a valid license and insurance, that Respondent not drive a motor vehicle with any measurable amount of alcohol in his system, among other conditions.
16. Respondent violated the probation orders in Orange County Superior Court Case No. 04HM09006 when he violated Vehicle Code, sections 23152(a), 23152(b), 14601.2(a), and 20002(a) on December 21, 2007.

**LEGAL CONCLUSIONS PERTAINING TO CASE NOS. 11-C-11163, 11-C-11164 and 11-C-11166:**

17. By driving under the influence of alcohol on three occasions, by driving on a suspended license while his license was suspended for prior driving under the influence arrests on two occasions, by committing a hit and run with property damage on one occasion, by violating conditions of his probation in Orange County Superior Court Case Nos. 04HM0002 and 04HM09006, Respondent committed misconduct warranting discipline, but which does not involve moral turpitude.

**PENDING PROCEEDINGS.**

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

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of May 20, 2011, the prosecution costs in this matter are approximately \$6,861.00. 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.

**AUTHORITIES SUPPORTING DISCIPLINE.**

Standard 3.2, Standards for Attorney Sanctions For Professional Misconduct; *See, In re Kelley* (1990) 52 Cal.3d 487 (public reproof for two driving under the influence of alcohol convictions and probation violations). Greater discipline is warranted in this case because it involved three driving under the influence convictions, two suspended license convictions, a hit and run with property damage, and probation violations.

**MITIGATING CIRCUMSTANCES.**

## **FACTS SUPPORTING MITIGATING CIRCUMSTANCES.**

### **Candor and Cooperation/ Remorse:**

Respondent immediately contacted the assigned trial counsel as soon as the conviction matters were referred to the State Bar Court and agreed to resolve all matters early in the proceedings. He admitted all pertinent facts and circumstances surrounding his convictions. Respondent's actions saved the State Bar and the State Bar Court's resources and evidences a recognition of wrongdoing and immediate attempts to rectify the misconduct.

### **Physical/ Emotional Difficulties:**

Respondent's convictions were caused by Respondent's DSM IV diagnosis of Substance Abuse and Dependency upon alcohol from 2003 to December 2007.

On March 27, 2008, following his conviction in Orange County Superior Court Case No. 08HM00664 Respondent was required to confront his alcohol abuse and dependency. He enrolled in the Orange County DUI Court Program, which is a voluntary program, which includes regular court appearances before a superior court judge, drug and alcohol testing and counseling, and attendance at AA meetings on a multiple times per week basis. Respondent entered the program March 27, 2008 and successfully completed and graduated from the program on June 29, 2009.

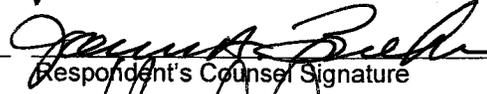
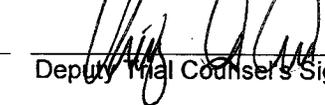
On May 19, 2011, Respondent underwent a substance assessment evaluation and presented a medical report to the State Bar showing that he is at a low risk for future substance abuse.

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In the Matter of: James A. Burton	Case number(s): 11-C-11163, 11-C-11164 and 11-C-11166
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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.

5/23/11 Date	 Respondent's Signature	James A. Burton Print Name
5/23/11 Date	 Respondent's Counsel Signature	James A. Burton Print Name
5/24/11 Date	 Deputy Trial Counsel's Signature	KIMBERLY G. ANDERSON Print Name

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In the Matter of: James A. Burton	Case Number(s): 11-C-11163, 11-C-11164 and 11-C-11166
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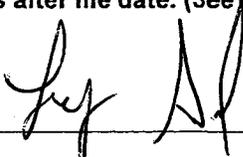
### STAYED SUSPENSION ORDER

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.)**

June 13, 2011  
Date

  
\_\_\_\_\_  
Judge of the State Bar Court  
**LUCY ARMENDARIZ**

**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 June 13, 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:

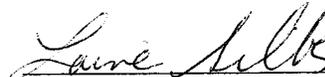
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JAMES A. BURTON  
MOWER CARREON & DESAI LLP  
8001 IRVINE CENTER DR #1450  
IRVINE, CA 92618

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

KRISTIN L. RITSEMA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 13, 2011.



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Laine Silber  
Case Administrator  
State Bar Court