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State Bar Court of California Hearing Department Los Angeles DISBARMENT			PUBLIC MATTER
<p>Counsel For The State Bar</p> <p>Kimberly G. Anderson, SBN 150359 Senior Trial Counsel Elizabeth Gonzalez, SBN 256839 Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1083</p> <p>Bar #</p>	<p>Case Number(s): 11-C-18679-RAH</p>	<p>For Court use only</p> <div style="text-align: center; padding: 20px;"> <p style="font-size: 1.5em; font-weight: bold;">FILED</p> <p style="font-size: 1.2em;">JUN 13 2013 P.B.</p> <p style="font-size: 0.8em; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> </div>	
<p>In Pro Per Respondent</p> <p>Kenneth Lee Rosen 21134 Celtic Street Chatsworth, CA 91311</p> <p>Bar # 128279</p>	<p>Submitted to: Assigned 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: KENNETH LEE ROSEN</p> <p>Bar # 128279</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 June 17, 1987.
- (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 (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 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
 - (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:
- (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.

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- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (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.
- (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.
- (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:

See Attachment at page 8.

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:**

7. By way of example, one of the videos possessed by Respondent is titled “##### <####>(#)##13)m1 2yo 3yo 4yo 5yo 6yo 7yo 8yo pthc pedo – legs tied and fucked in the ass and cunt.mpg.” The video is approximately 1:29 in length and depicts a prepubescent female, approximately 8 to 10 years of age, with her legs spread and suspended by having white pieces of cloth tied around her ankles. There is a black cloth covering her upper torso and face. During the video, she is raped and sodomized by an adult male.

8. Respondent knowingly possessed the child pornography, and he knew that the photographs were visual depictions of minors engaged in sexually explicit conduct. Respondent knew that the production of such visual depictions involved the use of a minor in sexually explicit conduct. The photographs Respondent possessed had been electronically mailed, shipped, or transported via the Internet, which is a means and facility of interstate or foreign commerce.

CONCLUSIONS OF LAW:

9. The facts and circumstances surrounding Respondent’s criminal conviction for violating Title 18 United States Code sections 2252A(a)(5)(B) and 2252A(b)(2) [Possession of Child Pornography] involved moral turpitude.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent was admitted to practice law in California on June 17, 1987, and had been practicing law for almost 22 years without prior discipline prior to the commencement of the misconduct herein (May 2009). Although Respondent’s misconduct is serious, the fact that he has no prior record of discipline is entitled to some weight in mitigation. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Cooperation: Pre-trial Stipulation. In *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156, the court found that Downey was entitled to mitigation for cooperating with the State Bar by entering into a fairly comprehensive pretrial stipulation of facts. Although the stipulated facts were not difficult to prove, and Downey did not admit culpability, the stipulation was relevant and assisted the State Bar’s prosecution of the case. The court accorded Downey limited mitigation under standard 1.2(e)(v). Here, Respondent is entitled to limited mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial in case no. 11-C-18679, thereby saving the State Bar Court time and resources. (*Id.*; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993-94.)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a “process of fixing discipline” pursuant to a set of written principles to “better discharge the purposes of attorney discipline as announced by the Supreme Court.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.” (*In re Morse* (1995) 11 Cal.4th 184, 205; std. 1.3.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Standard 3.2 states that a final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission shall result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. Here disbarment is warranted.

Respondent's conviction for possession of child pornography involves such a serious breach of duty owed to both children and to society and also involves such flagrant disrespect for the law and societal norms that knowledge of Respondent's conduct is certainly likely to undermine public confidence in and respect for the legal profession. Child pornography is repugnant because it involves the sexual abuse and exploitation of children. The Supreme Court has held, “[i]n the attorney discipline context, the term ‘moral turpitude’ includes ‘particular crimes that are extremely repugnant to accepted moral standards such as . . . serious sexual offenses (*In re Boyd* (1957) 48 Cal.2d 69 [307 P.2d 625]).’ [Citation omitted.]” (*In re Lesansky* (2001) 25 Cal.4th 11, 17.)

The facts and circumstances surrounding Respondent's felony conviction involve moral turpitude. Respondent knowingly possessed more than 3,000 images and videos of child pornography. The images and videos possessed by Respondent depicted prepubescent children, children under the age of twelve, being subjected to sadistic sexual acts. Under the applicable Standard, disbarment is the appropriate level of discipline. No compelling mitigating circumstances clearly predominate.

In *Lesansky*, the Supreme Court ruled that *attempted* child molestation involved moral turpitude because the crime is “extremely repugnant to accepted moral standards.” (Id.) Like the child molestation prohibition involved in *Lesansky*, the child pornography laws reflect the moral imperative against causing harm to children. Possession of child pornography involves moral turpitude because it too is a crime that is “extremely repugnant to accepted moral standards,” and which is part of a trade which preys on, and harms, the most vulnerable. In *Lesansky*, the Supreme Court stated that:

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 public confidence in and respect for the legal profession.**

(*Lesansky, supra*, 25 Cal. 4th at 16 (emphasis added).)

PENDING PROCEEDINGS.

The disclosure date referred to on page 2, paragraph A(7), was April 12, 2013.

COST OF DISCIPLINARY CHARGES.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of April 12, 2013 the costs in this matter are approximately \$2,343. 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 costs of further proceedings.

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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>5/7/13</u> Date	<u>Kenneth L. Rosen</u> Respondent's Signature	<u>Kenneth L. Rosen</u> Print Name
<u>5-17-13</u> Date	<u>[Signature]</u> Respondent's Counsel Signature	<u>Elizabeth Gonzalez</u> Print Name
<u> </u> Date	<u> </u> Deputy Trial Counsel's Signature	<u> </u> Print Name

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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:

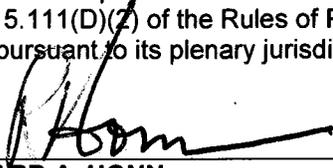
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

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 Kenneth Lee Rosen 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

6/11/13


RICHARD A. HONN
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 13, 2013, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE
ENROLLMENT**

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:

**KENNETH LEE ROSEN #61454-112
FCI SEAGOVILLE
P.O. BOX 9000
SEAGOVILLE, TX 75159-9000**

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

**Kimberly G. Anderson, Enforcement, Los Angeles
Elizabeth Gonzalez, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 13, 2013.



Paul Barona
Case Administrator
State Bar Court