

(Do not write above this line.)

**State Bar Court of California  
Hearing Department  
San Francisco  
ALTERNATIVE DISCIPLINE PROGRAM**

<b>Counsel For The State Bar</b>  <b>Susan I. Kagan</b> <b>Senior Trial Counsel</b> <b>180 Howard St.</b> <b>San Francisco, CA 94105</b> <b>(415) 538-2037</b>	<b>Case Number (s)</b> <b>13-C-14865-LMA</b>	<b>(for Court's use)</b>  <b>PUBLIC MATTER</b>  <b>FILED</b>  <b>NOV 24 2014</b>  <b>STATE BAR COURT CLERK'S OFFICE</b> <b>SAN FRANCISCO</b>
<b>Bar # 214209</b>		
<b>In Pro Per Respondent</b>  <b>Jonathan Andrew Bornstein</b> <b>230 Cascade Dr</b> <b>Fairfax, CA 94930</b> <b>(415) 847-4810</b>		
<b>Bar # 196345</b>	<b>Submitted to: Program Judge</b>	
<b>In the Matter Of:</b> <b>JONATHAN ANDREW BORNSTEIN</b>	<b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</b>	
<b>Bar # 196345</b>	<input type="checkbox"/> <b>PREVIOUS STIPULATION REJECTED</b>	
<b>A Member of the State Bar of California</b> <b>(Respondent)</b>		

**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 **August 6, 1998**.
- (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 **7** 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."



(Do not write above this line.)

- (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 **05-C-01858. See Attachment to Stipulation at p. 5.**
  - (b)  Date prior discipline effective **May 13, 2007.**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code, section 6068(a) for violation of Vehicle Code section 23152(b), with two priors.**
  - (d)  Degree of prior discipline **18 months stayed suspension, 3 years probation, no actual suspension.**
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below:
- (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.
- (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)  **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:**

**Letters of support:** See attachment to Stipulation at p. 6.

**Pre trial Stipulation:** See attachment to Stipulation at p. 6.



7. In the early morning of August 10, 2013, respondent was driving his automobile northbound on U.S. 101, going from Mill Valley, to his home in Fairfax.

8. On August 10, 2013, at approximately 1:15 a.m., respondent's driving drew the attention of California Highway Patrol ("CHP") officers.

9. On August 10, 2013, at approximately 1:15 a.m., the CHP officers stopped respondent for failing to signal a lane change and for crossing the lane divider twice.

10. On August 10, 2013, at approximately 1:15 a.m., the CHP officers conducted a field sobriety test on respondent, which respondent failed.

11. On August 10, 2013, at approximately 1:30 a.m., the CHP officers placed respondent under arrest for violating Vehicle Code section 23152(a) [Driving Under the Influence].

12. On August 10, 2013, at approximately 1:37 a.m. and 1:41 a.m., respondent provided two breath samples on an Alcotest 7410-Plus machine. The samples were measured with a blood alcohol level of .14 and .13 respectively.

13. On August 10, 2013, respondent was booked for violation of Vehicle Code section 23152(a) [Driving Under the Influence], and violation of Vehicle Code section 23152(b) [Driving While Having a .08% or Higher Blood Alcohol].

14. On August 22, 2013, the Marin County District Attorney filed a criminal complaint in the Marin County Superior Court, case no. CR185835, charging respondent with one count of violation of Vehicle Code section 23152(a) [Driving Under the Influence], a misdemeanor, and one count of violation of Vehicle Code section 23152(b) [Driving While Having a .08% or Higher Blood Alcohol], a misdemeanor, with a prior conviction for violation of Vehicle Code section 23152(b).

15. On November 5, 2013, respondent pled guilty to count two, one count of violation of Vehicle Code section 23152(b) [Driving While Having a .08% or Higher Blood Alcohol], a misdemeanor, with a prior violation of Vehicle Code section 23152(b).

16. The November 5, 2013, conviction is respondent's 4<sup>th</sup> alcohol related conviction. Respondent's prior convictions are: May 29, 1996 [Vehicle Code section 23152(b)], February 5, 1997 [Vehicle Code section 23152(b)], and February 9, 2006 [Vehicle Code section 23152(b)].

#### CONCLUSIONS OF LAW:

17. 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 a prior record of discipline in case no. 05-C-01858-PEM. The discipline resulted from respondent's 3<sup>rd</sup> criminal conviction for driving under the influence of alcohol. The Supreme Court, in its Order S149960, imposed an 18 month stayed suspension and 3 years of probation. The effective date of the discipline was May 13, 2007.

## MITIGATING CIRCUMSTANCES.

### **Additional Mitigating Circumstances:**

**Letters of Support:** Respondent has provided six letters of support from friends and colleagues. Five of the letters are from attorneys, with the remaining letter being from a physician. Although the letters of support are insufficient to afford mitigation credit under Standard 1.6(f), they are entitled to limited weight. (See *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 477; *In re Ford* (1988) 44 Cal.3d 810, 818.)

**Pretrial Stipulation:** Respondent is entitled to mitigation for entering into a stipulation with the Office of Chief Trial Counsel prior to trial in the above referenced disciplinary matter, thereby saving State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

## COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of June 2, 2014, the prosecution costs in this matter are \$3,000. 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.

## EXCLUSION FROM MCLE CREDIT

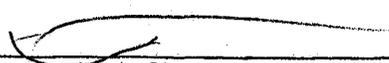
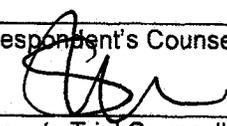
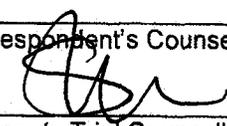
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: JONATHAN ANDREW BORNSTEIN	Case number(s): 13-C-14865-LMA
--	-----------------------------------

**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>09/02/14</u> Date	 Respondent's Signature	<u>Jonathan A. Bornstein</u> Print Name
<u>9/8/14</u> Date	 Respondent's Counsel Signature	<u>N/A</u> Print Name
<u>9/8/14</u> Date	 Deputy Trial Counsel's Signature	<u>Susan I. Kagan</u> Print Name

(Do not write above this line.)

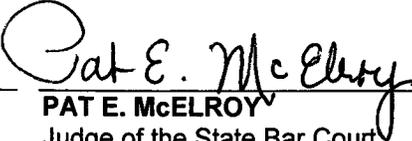
In the Matter of: JONATHAN ANDREW BORNSTEIN	Case Number(s): 13-C-14865-LMA
--	-----------------------------------

**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.)

Date Nov. 24, 2014   
PAT E. McELROY  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**  
**[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]**

I am a Case Administrator of the State Bar Court. 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 November 24, 2014, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

in a sealed envelope for collection and mailing on that date as follows:

- [X]** by personally delivering such documents to the following individuals at 180 Howard Street, 6th Floor, San Francisco, California 94105-1639:

**JONATHAN A. BORNSTEIN, ESQ.**  
**SUSAN I. KAGAN, ESQ.**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 24, 2014.

  
George Hue  
Case Administrator  
State Bar Court