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<b>State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION</b>		
<p>Counsel For The State Bar</p> <p><b>Susan I. Kagan</b> Senior Trial Counsel 180 Howard St. San Francisco, CA 94105 (415) 538-2037</p> <p>Bar # 214209</p>	<p>Case Number(s): <b>13-C-16767-PEM</b></p>	<p>For Court use only</p> <p style="text-align: center;"><b>PUBLIC MATTER</b></p> <p style="text-align: center;"><b>FILED</b> ✓</p> <p style="text-align: center;"><b>OCT 30 2014</b></p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p><b>Shahab Eddin Fotouhi</b> PO Box 330129 San Francisco, CA 94133 (415) 441-2470</p> <p>Bar # 168301</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: <b>SHAHAB EDDIN FOTOUHI</b></p> <p>Bar # 168301</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 **December 14, 1993**.
- (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 **13** 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."
- (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):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - 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 [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
  - (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 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 attachment at p. 10.**
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **See attachment at p. 10.**
- (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. **See attachment at p. 10.**
- (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. **See attachment at p. 10.**
- (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. **See attachment at p. 10.**
- (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:**

**No Prior Discipline, see attachment at p. 10.**  
**Community Service, see attachment at p. 10.**  
**Pretrial Stipulation, see attachment at p. 10.**

**D. Discipline:**

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of **two (2) years**.

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 1.2(c)(1) 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:

(b)  The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent must be 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)

(3)  **Actual Suspension:**

(a)  Respondent must be actually suspended from the practice of law in the State of California for a period of **six (6) months**.

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 1.2(c)(1), 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:

**E. Additional Conditions of Probation:**

(1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.

(2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3)  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.

- (4)  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.
- (5)  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.

- (6)  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.
- (7)  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.
- (8)  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 Ethics School, and passage of the test given at the end of that session.
  - No Ethics School recommended. Reason: .
- (9)  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.
- (10)  The following conditions are attached hereto and incorporated:
  - Substance Abuse Conditions                       Law Office Management Conditions
  - Medical Conditions                                       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 during the period of actual suspension or within one year, whichever period is longer. **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.**

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No MPRE recommended. Reason:

- (2)  **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.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she 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 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: **May 21, 2014.**
- (5)  **Other Conditions:**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      SHAHAB EDDIN FOTOUHI

CASE NUMBER:                            13-C-16767-PEM

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which he was convicted involved moral turpitude.

Case No. 13-C-16767 (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 February 27, 2013, the Napa County District Attorney filed a criminal complaint in the matter, *People v. Fotouhi*, Napa County Superior Court, case no. CR166062, charging respondent with one count of violation of Penal Code section 273.6(a) [disobeying domestic relations court order], a misdemeanor, and one count of violation of Penal Code section 646.9(a) [stalking], a misdemeanor. The complaint was amended twice.

3. On January 8, 2014, the Napa County District Attorney filed an Information, charging respondent with 11 counts of violating the Penal Code, as follows:

Count One:                            646.9(b) [stalking], a felony  
Count Two:                            646.9(a) [stalking], a felony  
Counts Three through Ten:    273.6(a) [disobeying domestic relations court order], a misdemeanor  
Count Eleven:                        166(c)(1) [contempt of court], a misdemeanor

4. On March 4, 2014, the court entered respondent's plea of no contest to Count Two, one count of violation of Penal Code section 646.9(a) [stalking], a felony, and based thereon, the court found Respondent guilty of that count. Pursuant to a plea agreement, the court dismissed the remaining counts.

5. On March 4, 2014, the court suspended the imposition of sentence and placed respondent on formal probation for a period of three years. The court ordered that respondent serve 185 days in jail with 92 actual days and 92 conduct credit days. The court also ordered that respondent, among other things, refrain from drinking or possessing alcoholic beverages, undergo a drug/alcohol assessment, attend 52 weeks of anger management counseling and pay fines and fees.

6. On July 23, 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 found that the facts and circumstances surrounding the offense for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

7. On October 22, 2012, respondent's wife filed a petition for dissolution in *Simon-Fotouhi v. Fotouhi*, Napa County Superior Court Case No. 26-60212 ("dissolution matter"). The dissolution and custody proceedings between respondent and his wife became contentious. All communications between the parties were via text message or email. The parties did not communicate in person or over the telephone.

8. Upon discovering that his wife had hired counsel in the dissolution matter, respondent became angry and, as of November 3, 2012, began sending numerous text messages to his wife. In November, respondent sent his wife a total of 54 text messages. In many of the text messages, respondent used foul language, calling his wife names such as "idiot" "stupid woman" "idiot bitch" "nut" and much worse. He also called his father-in-law names and made disparaging remarks about the family's religion. Although respondent was never violent to his wife or her father during the marriage or anytime thereafter, respondent's wife and her father found the text messages to be threatening and harassing.

9. On November 27, 2012, respondent's wife sought a temporary restraining order ("TRO") against Respondent, but later withdrew her request based on an agreement of the parties. Respondent, however, continued sending text messages to her which she found to be harassing and threatening.

10. In December, respondent sent his wife 28 text messages. In January, respondent sent his wife 134 text messages. Respondent's wife found the text messages to be threatening and harassing and on January 28, 2013, reported respondent's conduct to the police.

11. On February 8, 2013, respondent's wife again sought a temporary restraining order ("TRO") against respondent. On the same date, the court issued a TRO against respondent in Napa County Superior Court Case No. 26-60908. The TRO was in effect from February 8, 2013 through February 28, 2013. As part of the TRO, respondent was prohibited from doing the following toward his wife or his wife's father: "Harass...Contact (directly or indirectly), telephone, send messages, mail, or e-mail." Respondent was permitted "Brief and peaceful contact as required for court-ordered visitation of children." Respondent was personally served with the TRO on February 20, 2013.

12. In February, respondent sent his wife 144 text messages and seven emails. Some of the messages involved visitation issues, however many did not and were in violation of the TRO. In addition, the language contained in many of the messages regarding visitation violated the "peaceful contact" provision of the TRO.

13. On February 27, 2013, the Napa County District Attorney filed a criminal complaint against Respondent. However, the complaint was never served on respondent because he was able to evade service. Likewise, in the dissolution matter, respondent knowingly failed to appear at scheduled hearings for a period of almost a year and was able to evade service of contempt motions.

14. On February 28, 2013, respondent's wife sought a permanent restraining order against Respondent. On the same date, the court issued a Domestic Violence Restraining Order (DVRO) against respondent in Napa County Superior Court Case No. 26-60908. The DVRO was in effect from February 28, 2013 through February 28, 2018. As part of the DVRO, respondent was prohibited from



doing the following toward his wife or his wife's father: "Harass...Contact (directly or indirectly), telephone, send messages, mail, or e-mail." Respondent was permitted "Brief and peaceful contact as required for court-ordered visitation of children." Respondent was served with the DVRO. At all times relevant, the DVRO was in full force and effect.

15. In March, respondent sent his wife 119 text messages and 18 emails. In April, respondent sent his wife 61 text messages and 13 emails. In May, respondent sent his wife 71 text messages and 46 emails. From June through November, Respondent sent 6 text messages and 64 emails. Some of the messages involved visitation issues, however many did not and were in violation of the DVRO. In addition, the language contained in many of the messages regarding visitation was the same as described above and violated the "peaceful contact" provision. Respondent's wife and her father found the messages to be threatening and harassing.

16. On October 29, 2013, an arrest warrant and search warrant were issued by the court in the criminal matter. On October 30, 2013, service was finally effectuated. Respondent was served with the arrest warrant and search warrant, taken into custody and booked with violating Penal Code section 166(a)(4) [disobeying court order] and Vehicle Code section 40508(a) [failure to appear on written promise]. Respondent was incarcerated from October 30, 2013 to November 8, 2013, and again from December 12, 2013 through March 4, 2014.

17. On November 11, 2013, an amended criminal protective order was issued, prohibiting Respondent from having any contact with his wife. Defendant was served with the order. On December 8, 2013, respondent sent his wife an email solely regarding visitation issues. The email violated the amended protective order which prohibited all contact. Thereafter, respondent ceased all communications with his wife, including those regarding visitation.

18. From November 2012 through December 2013, respondent sent his wife a total of 617 text messages and 149 emails, many in violation of the respective restraining orders.

19. On January 8, 2014, the Napa County District Attorney filed an Information, charging respondent with 11 counts in violation of the Penal Code, as follows:

Count One:	646.9(b) [stalking], a felony
Count Two:	646.9(a) [stalking], a felony
Counts Three through Ten:	273.6(a) [disobeying domestic relations court order], a misdemeanor
Count Eleven:	166(c)(1) [contempt of court], a misdemeanor

20. On March 4, 2014, respondent pled no contest to a violation of Penal Code section 646.9(a) [stalking], a felony.

#### CONCLUSIONS OF LAW:

21. The facts and circumstances surrounding the above-described violation involved moral turpitude. (See *In the Matter of Elkins* [numerous threatening and harassing voicemail messages to administrators and court officers constituted moral turpitude]; *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 147 [numerous phone calls to client resulting in harassment and intentional infliction of emotional distress constituted acts of moral turpitude].)

## AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** In this matter, respondent sent numerous text messages and emails in violation of three different restraining orders, demonstrating multiple acts of wrongdoing.

**Harm (std. 1.5(f)):** Respondent's harassing text messages and emails caused significant harm to the victim of his misconduct. Respondent's wife reported that she felt threatened by the messages and lived in fear for herself, her child and her father. Respondent caused significant harm to the administration of justice by willfully failing to attend more than 10 hearings in the dissolution matter.

**Indifference (std. 1.5(g)):** Respondent's intentional violations of the restraining orders and his evasion of service in the criminal and dissolution matters demonstrates indifference toward rectification or atonement for the consequences of the misconduct.

## MITIGATING CIRCUMSTANCES.

**Good Character (std. 1.6(f)):** Respondent submitted 12 character letters from people aware of the full extent of respondent's misconduct and attest to his integrity, honesty and professionalism. The reference letters are from attorneys, friends and family.

### **Additional Mitigating Circumstances:**

**No Prior Record of Discipline:** Although respondent's misconduct is serious, he is entitled to mitigation for having practice law for approximately 20 years without discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

**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].)

**Community Service:** In 1990, respondent volunteered at the Legal Aid Society of Alameda County. In 1994, respondent helped found the Construction Litigation section of the Barrister's Club of San Francisco; respondent served as vice-chair and chair of the section. From 2002 through 2010, respondent served on the Board of Governors of USF Law School; respondent held many positions on the Board, including president. In 2005, respondent was awarded the John Meehan award for his mentorship, training and hiring of USF Law School graduates. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359 [civic service and charitable work considered as evidence of good character].)

**Family Problems:** At the time of the misconduct, respondent was suffering from extreme difficulties in his personal life related to divorce and custody proceedings. (*In re Naney* (1990) 51 Cal.3d 186, 197 [mitigation credit for marital problems if extreme and directly responsible for the misconduct].) Although respondent is still involved in divorce and custody proceedings, he has not committed any further misconduct.

## AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (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.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Here, respondent intentionally violated restraining orders by sending numerous harassing text messages and emails to his wife during the pendency of divorce proceedings. Standard 2.11(b) is applicable since the facts and circumstances surrounding respondent’s felony conviction involved moral turpitude. Standard 2.11(b) provides: “Disbarment is appropriate for final conviction of a felony in which the facts and circumstances surrounding the offense involve moral turpitude, unless the most compelling mitigating circumstance clearly predominate, in which case actual suspension of at least two years is appropriate.”

It should be noted that Penal Code section 646.9(a) is a “wobbler” in that it can be charged as a misdemeanor and a felony. In fact, Respondent was initially charged with a misdemeanor violation. Therefore, fairness dictates consideration of standard 2.11(c). (See, e.g., *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465 [consideration given to whether the violation can be charged as both a misdemeanor and felony].) Standard 2.11(c) provides: “Disbarment or actual suspension is appropriate for final conviction of a misdemeanor involving moral turpitude.”

To determine the appropriate level of discipline, consideration must also be given to the aggravating and mitigating circumstances. In aggravation, respondent committed multiple acts of misconduct, the misconduct caused significant harm to his wife and the administration of justice and respondent demonstrated indifference toward rectification or atonement for the consequences of the misconduct. Respondent is entitled to significant mitigation credit for having practiced law for approximately 20 years without discipline. In addition, respondent is entitled to mitigation for his evidence of good

character, community service, family problems and for voluntarily entering into this stipulation, thereby belatedly accepting responsibility for his wrongdoing. Further, respondent's misconduct can be characterized as aberrational and unlikely to reoccur given his lack of prior discipline over many years of practice, the fact that during the misconduct respondent was undergoing stress from the divorce and custody proceedings and evidence that respondent's misconduct ceased shortly after his arrest and has not reoccurred even though the divorce and custody proceedings are still ongoing. In light of the foregoing, a period of actual suspension with a lengthy probationary period is appropriate under the standards.

Case law is instructive. This matter is most similar to *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160. In *Elkins*, the attorney left 53 threatening and abusive voicemail messages to the administrator of his father's estate and an attorney and judge involved in the probate of his father's estate. In the voicemail messages, the attorney was verbally abusive and threatened bodily harm to the victims. The court recommended a 90-day actual suspension based on violations of Business and Professions Code sections 6106 [moral turpitude] and 6068(b) [failing to maintain respect to the court] and Rules of Professional Conduct, rule 5-100(A) [threatening to gain an advantage in a civil suit]. In aggravation, the court found multiple acts of misconduct, significant harm to the administration of justice and a lack of remorse. In mitigation, the court found no prior discipline in 24 years of practice. The court did not give any mitigation credit for extreme emotional difficulties as a result of the attorney's father's death since the death occurred two years before the harassing telephone calls began.

In assessing the level of discipline, the court noted: "To his credit, Elkins has 24 years of discipline-free practice without a record of abusive conduct, and he now recognizes that he got 'carried away' with the situation. Moreover, his behavior did not involve physical injury to another. We further observe that when faced with the Superior Court's [protective] order, he ceased his telephone harassment...But by any measure, his conduct is 'unacceptable from anyone in society and particularly reprehensible for an attorney.'" (*Id.* at p. 169; citations omitted.)

The same sentiment applies to respondent's misconduct. In fact, respondent's misconduct is more egregious than that in *Elkins* since Respondent knowingly violated restraining orders which resulted in a felony conviction. Respondent may be entitled to more mitigation credit than in *Elkins*, however, the seriousness of his misconduct warrants greater discipline.

On balance, a six-month actual suspension with three years of probation is necessary to protect the public and will serve the purposes of attorney discipline.

#### **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 \$2,392. 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**

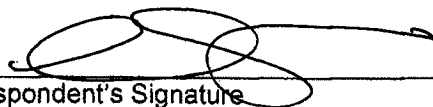
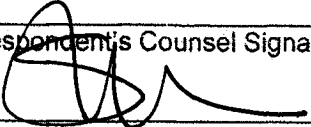
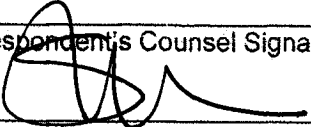
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: SHAHAB EDDIN FOTOUHI	Case number(s): 13-C-16767
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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>10/14/2014</u> Date	 Respondent's Signature	<u>Shahab E. Fotouhi</u> Print Name
<u>                    </u> Date	 Respondent's Counsel Signature	<u>N/A</u> Print Name
<u>10/16/14</u> Date	 Deputy Trial Counsel's Signature	<u>Susan I. Kagan</u> Print Name

(Do not write above this line.)

In the Matter of: SHAHAB EDDIN FOTOUHI	Case Number(s): 13-C-16767
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### ACTUAL 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.)**

Oct. 30, 2014  
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 October 30, 2014, 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:

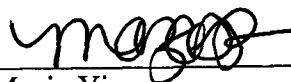
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

SHAHAB E. FOTOUHI  
PO BOX 330129  
SAN FRANCISCO, CA 94133

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

SUSAN I. KAGAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 30, 2014.



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Mazie Yip  
Case Administrator  
State Bar Court