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State Bar Court of California Hearing Department Los Angeles REPROVAL				
Counsel For The State Bar	Case Number(s): 13-O-10876-RAP	For Court use only		
Mia R. Ellis Senior Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017		FILED		
	IICMATTER	APR 17 2014		
Bar # 228235		STATE BAR COURT CLERK'S OFFICE LOS ANGELES		
Counsel For Respondent				
Arthur Margolis Margolis & Margolis LLP 2000 Riverside Drive Los Angeles, CA 90039 323-953-4790				
323-933-4790	Submitted to: Assigned Judge			
Bar # 57703	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING			
In the Matter of: MICHAEL D. WAKS	PUBLIC REPROVAL			
Bar # 106452	PREVIOUS STIPULATION REJECTED			
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 3, 1982.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 10 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



(Effective January 1, 2014)

- (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 (public reproval).
 - Case ineligible for costs (private reproval).
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (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.

- (9) The parties understand that:
 - (a) A private reproval imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproval was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproval imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) A public reproval imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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 or a separate attachment entitled "Prior Discipline.

- (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 subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Discipline - Please see page 8.

Pro Bono Activities - Please see page 8.

Pretrial Stipulation - Please see page 8.

D. Discipline:

- - (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
 - (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).
- <u>or</u>
- (2) Z Public reproval (Check applicable conditions, if any, below)

E. Conditions Attached to Reproval:

- (1) Respondent must comply with the conditions attached to the reproval for a period of **one year**.
- (2) During the condition period attached to the reproval, 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 condition period attached to the reproval. 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 the reproval during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reproval.
- (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.

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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) 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 of the effective date of the reproval.

No MPRE recommended. Reason:

(11) 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:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MICHAEL D. WAKS

CASE NUMBER: 13-O-10876-RAP

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 13-O-10876 (Complainant: Gregory Velardez)

FACTS:

- 1. At all relevant times herein, Respondent had an ownership interest in Medical Finance, LLC (Medical Finance).
- 2. On December 29, 2010, Gregory Velardez (Velardez) was involved in an accident while a passenger in the truck owned by and being driven by his uncle, Randy Velardez. Randy Velardez was insured with Alliance United Insurance Company (Alliance).
- 3. On January 11, 2011, Velardez hired Respondent to represent his interest in a claim for personal injury resulting from the car accident. Respondent and Velardez entered into a contingency fee agreement.
- 4. Velardez was referred to three medical providers for treatment, one of which was MAX MRI Imaging Inc. (Max). Once Velardez completed his treatment, Respondent commenced to negotiate with Alliance.
- 5. On April 7, 2011, Respondent signed an Authorization to Set Up Lien with Max, which gave Max a lien on Velardez's case to cover the cost of the medical services provided by Max to Velardez. On April 8, 2011, Respondent signed a Factoring Agreement, which stated, among other things, that the lien for medical services from Max had been assigned to Medical Finance. On April 22, 2011, Velardez signed both documents. Medical Finance purchased Max's lien on Velardez's case for \$400.
- 6. Respondent did not inform Velardez that he had an ownership interest in Medical Finance.
- 7. On June 2, 2011, Respondent wrote to Alliance and provided a summary of Velardez's medical specials totaling \$5,370.00. Respondent stated that they would accept \$70,000 in full settlement of the case.

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- 8. On September 23, 2011, Alliance made an offer to settle the matter for \$ 500.00 as full compensation for Velardez's injuries. Respondent and Velardez discussed the offer. Respondent then sent written correspondence to Velardez on October 10, 2011 memorializing their telephone conversation where it was agreed upon between Respondent and Velardez that they would reject the offer and file a personal injury lawsuit.
- 9. On October 12, 2011, Respondent filed a lawsuit on behalf of Velardez in the Los Angeles County Superior Court, entitled *Gregory Velardez v. Randy Velardez*, case number 11K16169.
- 10. On October 20, 2011, Respondent, as President of Medical Finance, sent a letter to himself, as attorney on behalf of Velardez, stating that Max's lien, executed on behalf of Velardez, had been assigned and transferred to Medical Finance. The total bill amount was \$2,050.00.
- 11. On February 10, 2012, Alliance served an offer to compromise under Code of Civil Procedure section 998 in the amount of \$501.00.
- 12. On February 23, 2012, Respondent and Velardez discussed Alliance's offer of \$501.00. Velardez did not want to accept it. Respondent advised Velardez that he could no longer represent him and that Velardez needed to employ another attorney to take his personal injury case to trial.
- 13. On March 2, 2012, Respondent and Velardez met. Velardez signed a substitution of attorney, received his entire file, and Respondent gave Velardez a letter explaining the next steps in his case and pending medical liens on the case, including Medical Finance's lien. During the meeting, Respondent informed Velardez that he had a financial interest in the company that purchased Max's lien and that Respondent was the President and Owner of Medical Finance, the company that purchased Max's medical lien.
- 14. At no time during his representation of Velardez did Respondent provide written disclosure to Velardez that he had an ownership or financial interest in Medical Finance.

CONCLUSIONS OF LAW:

- 15. By allowing Velardez to sign an Authorization to Set Up Lien and a Factoring Agreement for medical services, that assigned Max's medical lien on the client's case to Medical Finance, a company in which Respondent had an ownership and financial interest, without providing written disclosure to the client that Respondent had a financial interest in Medical Finance, Respondent continued representation of a client without providing written disclosure to the client relationship with another person or entity Respondent knew or reasonably should have known would be affected substantially by the resolution of the matter in willful violation of Rules of Professional Conduct, rule 3-310(B)(3).
- 16. By allowing Velardez to sign an Authorization to Set Up Lien and a Factoring Agreement for medical services, that assigned Max's medical lien on the client's case to Medical Finance, a

company which Respondent had an ownership and financial interest, without providing written disclosure to the client that Respondent had a financial interest in the subject matter of the representation, specifically that Respondent owned, managed and financed Medical Finance, Respondent continued representation of a client without providing written disclosure to the client that Respondent had a financial interest in the subject matter of the representation, in willful violation of Rules of Professional Conduct, rule 3-310(B)(4).

MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

No Prior Discipline: Although the misconduct is serious, Respondent has twenty-nine years in practice without misconduct, which is worthy of significant mitigation; *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn 13 [noting that the Supreme Court has repeatedly found mitigation under Standard 1.2(e)(1) for lack of a prior record of discipline in cases involving serious misconduct] and citing *Rodgers v. State Bar* (1989) 48 Cal. 3d 300, 317; *Cooper v. State Bar* (1987) 43 Cal. 3d 1016, 1029; see also *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Civic Service and Charitable Activities: Respondent has a background in civic service and charitable work. Respondent is a bronze-level member of the Honorary Board of Governors for Los Angeles Trial Lawyers' Charities, a nonprofit public benefit corporation that partners with other organizations in the Los Angeles area to provide financial assistance to persons and groups in need. Respondent raises and donates funds and clothes for those in need. He has worked on the Government Relations Committee and the Public Relations Committee of the Consumer Attorneys Association of Los Angeles, beginning about five years ago and continuing to the present, and served as a Judge Pro Tem at various times in the courts of Torrance, Long Beach, Compton, and San Pedro during the period from about 1986 through about 2011. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359; *Porter v. State Bar* (1990) 52 Cal.3d 518, 529.)

Pretrial Stipulation: Respondent has entered into a stipulation to facts, conclusions of law, and level of discipline and therefore is entitled to mitigation, in that it has saved the State Bar resources and also begins to show rehabilitation efforts. (*In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50; *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].)

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 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.) 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).)

Standard 2.15 provides that suspension not to exceed three years or reproval is appropriate for a violation of a provision of the Rules of Professional Conduct not otherwise specified in the Standards.

Here, Respondent did not advise Velardez of Respondent's interest in Medical Finance until he was substituting out of the case. However, Respondent had no prior record of discipline in 29 years of practice when the misconduct began, and Respondent has acknowledged and accepted responsibility for his misconduct by entering into this stipulation. Accordingly, in light of the particular facts of this matter, the mitigation and the absence of any aggravation, discipline at the low end of the range of discipline suggested by Standard 2.15 is appropriate. A public reproval will protect the public, courts and the legal profession, maintain high professional standards by attorneys, and preserve public confidence in the legal profession. (Standard 1.1.)

There is limited case law regarding violations of rule 3-310. However, rule 3-300 is somewhat similar and involves improper business transactions and acquiring pecuniary interest adverse to the client. Standard 2.4 provides that suspension is appropriate for improperly entering into a business transaction with the client or knowingly acquiring a pecuniary interest adverse to a client, unless the extent of the misconduct and any harm it caused to the client are minimal, in which case reproval is appropriate. In *Connor v. State Bar* (1990) 50 Cal. 3d 1047, an attorney obtained title to the client's real property without obtaining the client's informed written consent in violation of rule 3-300. The attorney had been in practice for sixteen years and had no prior record of discipline. The attorney received a public reproval.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of April 3, 2014, the prosecution costs in this matter are \$3,419. 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 <u>not</u> receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: MICHAEL D. WAK	S Case number(s): 13-O-10876	
By their signatures below	SIGNATURE OF THE P	e, signify their agreement with each of the
$\frac{4 - (4 - (4))}{\text{Date}}$	$\frac{1}{2}$	e Facts, Conclusions of Law, and Disposition. Michael D. Waks
4/15/14	Respondent's Signature	Print Name Arthur Margolis
Date U///////	Respondent's Coursel Stanature Deputy Trial Coursel's Signature	Print Name Mia Ellis
	Deputy mai opuniselis Signature	Print Name

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In the Matter of: MICHAEL D. WAKS Case Number(s): 13-O-10876

REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- 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. (See rule 5.58(E) & (F), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

04-17-2014

hilioa.

Date

Judge of the State Bar Court

RICHARDA PLATEL

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 April 17, 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 Los Angeles, California, addressed as follows:

ARTHUR LEWIS MARGOLIS MARGOLIS & MARGOLIS LLP 2000 RIVERSIDE DR LOS ANGELES, CA 90039

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

MIA R. ELLIS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, Galifornia, on April 17, 2014.

Johnnie Lee Smith Case Administrator State Bar Court