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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>San Francisco</b> <b>PROBATION VIOLATION</b>		
<b>Counsel For The State Bar</b>  Terrie Goldade 1149 S. Hill St. Los Angeles, CA 90015  Bar # 155348	<b>Case Number(s):</b> 13-PM-16618	For Court use only  <div style="text-align: center; font-size: 1.2em; font-weight: bold;">                         PUBLIC MATTER                           FILED  <span style="font-size: 0.8em;">✓</span>                          JAN - 8 2014                     </div> <div style="text-align: center; font-size: 0.8em; font-weight: bold; margin-top: 10px;">                         STATE BAR COURT CLERK'S OFFICE                          SAN FRANCISCO                     </div>
<b>Counsel For Respondent</b>  Jonathan I. Arons 221 Main St., Ste. 740 San Francisco, CA 94105  Bar # 111257	Submitted to: <b>Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  PROBATION VIOLATION—"PM" PROCEEDING  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: David Scott Silber  Bar # 176377  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 June 5, 1995.
- (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."
- (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 (no actual suspension).
  - 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 (actual suspension).
  - 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.

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline** [see standard 1.2(f)]
- (a)  State Bar Court case # of prior case 10-O-00366, 10-O-03134
  - (b)  Date prior discipline effective December 9, 2011
  - (c)  Rules of Professional Conduct/ State Bar Act violations: RPC 3-110(A), 3-700(D)(1), 3-700(D)(2); B&P 6068(m)
  - (d)  Degree of prior discipline one year, stayed; two years probation
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

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- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. There are multiple violations of probation.
- (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.
- (12)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

See Stipulation Attachment.

**D. Discipline (choose only one):**

- (1)  **Probation extended:** Respondent's probation in \_\_\_\_\_ is extended for \_\_\_\_\_.
- (2)  **Probation revoked; Probation Reinstated; Actual Suspension:** Respondent's probation is revoked and reinstated for two years on the same terms and conditions as previously imposed in S196240. The terms of probation remain the same as in the prior order except as indicated below. In addition, Respondent must be actually suspended from the practice of law for 60 days.
- (3)  **Probation revoked; Probation Reinstated; No Actual Suspension:** Respondent's probation is revoked and reinstated for \_\_\_\_\_ on the same terms and conditions as previously imposed in \_\_\_\_\_. The terms of probation remain the same as in the prior order except as indicated below.
- (4)  **Probation revoked; Probation not Reinstated; Actual Suspension:** Respondent's probation is revoked. Respondent must be suspended from the practice of law for \_\_\_\_\_.

**E. In addition to conditions previously imposed by the Supreme Court in its prior order, the following new conditions are recommended by this stipulation:**

- (1)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2)  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 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (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 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 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.

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- (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:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

**F. Other Conditions Negotiated by the Parties:**

- (1)  **Probation Conditions Deleted or Modified:** Respondent has completed his law office management plan, Ethics School, and the MPRE and does not need to complete those conditions again. Respondent is to again contact the Office of Probation and schedule and have a meeting to review the terms and conditions of his probation; submit quarterly reports; and comply with his medical conditions. :
- (2)  **Rule 9.20, California Rules of Court:** Respondent must comply with the provisions of subdivisions (a) and (c) of rule 9.20, California Rules of Court, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein.
- (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 provisions of subdivisions (a) and (c) of rule 9.20, California Rules of Court, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein.
- (4)  **Other:**

Attachment language (if any):

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of the specified violations.

1. On July 11, 2011, the State Bar Court filed and served upon Respondent a Stipulation re Facts, Conclusions of Law and Disposition and Order Approving in State Bar Court Case Nos. 10-O-00366 and 10-O-03134 ("Stipulation").
2. On November 9, 2011, the California Supreme Court filed an Order No. S196240 (State Bar Court Case Nos. 10-O-00366 and 10-O-03134) that Respondent be suspended from the practice of law for a period of one year, that execution of suspension be stayed and that Respondent be placed on probation for a period of two years, and that he be subject to the conditions of probation as recommended by the Hearing Department of the State Bar Court in its Stipulation filed on July 11, 2011.

a. As a condition of probation, Respondent was ordered to comply with the State Bar Act and Rules of Professional Conduct and to report such compliance to the Office of Probation under penalty of perjury on or before January 10, April 10, July 10, and October 10 of every year during the period of probation ("quarterly reports"). Respondent did not comply, as follows:

Due	Filed	Comments
4/10/12	4/10/12	timely
7/10/12	7/12/12	late
10/10/12	10/10/12	timely
1/10/13	1/10/13	timely
4/10/13	4/12/13	late
7/10/13	7/19/13	late
10/10/13	11/7/13	late
12/9/13	12/11/13	late

b. As a condition of probation, Respondent was ordered to, within one year of the effective date of his discipline—by December 9, 2012, provide satisfactory proof of attendance at a session of State Bar Ethics School, and passage of the test given at the end of that session. Respondent attended Ethics School late on December 13, 2012, and provided proof January 10, 2013.

c. As a condition of probation, Respondent was ordered to, within three months of the effective date of his discipline—by March 9, 2012, develop a law office management organization plan ("LOMP") which was to be approved by the Office of Probation. Respondent submitted a LOMP on March 9, 2012, but it was rejected for numerous deficiencies as set forth in a letter mailed to Respondent on March 15, 2012. On July 12, 2012, Respondent submitted an amended LOMP, which was rejected for several deficiencies as set forth in a letter mailed to Respondent on July 13, 2012. Respondent's second amended LOMP submitted January 10, 2013 was approved.

d. As a condition of probation, Respondent was to obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at Respondent's expense a minimum of four times per month and furnish evidence of such with each quarterly report. Help/treatment

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was to commence immediately, and in any event, no later than thirty days after the effective date of discipline—by January 8, 2012. Respondent has not complied, as follows:

Report Due	Comments
4/10/12	Report was submitted by a "MA", not a licensed psychiatrist, psychologist, or clinical social worker; report was not filed
7/10/12	Report was submitted by a "MA", not a licensed psychiatrist, psychologist, or clinical social worker; report was not filed
10/10/12	Report was submitted by a "MA", not a licensed psychiatrist, psychologist, or clinical social worker; report was not filed
1/10/13	Report was submitted by a "MA", not a licensed psychiatrist, psychologist, or clinical social worker; report was not filed
4/10/13	Although Respondent did not attend any counseling in January or February, a report filed with the Office of Probation late on November 26, 2013 confirmed 2 counseling sessions during March
7/10/13	Although Respondent affirms he had 4 sessions in May and 4 in June 2013, but that his counselor was ill and could not send a report, the Office of Probation was unable to confirm that the counselor was a psychiatrist, psychologist, or licensed clinical social worker
10/10/13	Although Respondent affirms he had 4 session in each July, August, and September 2013, but that his counselor was ill and could not send a report, the Office of Probation was unable to confirm that the counselor was a psychiatrist, psychologist, or licensed clinical social worker
12/9/13	Respondent did not receive counseling in October. Respondent had 2 sessions in November and 1 in December. Reports were filed late as of December 16

3. On December 21, 2011, the Office of Probation mailed a reminder letter to Respondent at his membership records address outlining the terms and condition of his probation. Respondent received the letter.

4. On January 12, 2012, the Office of Probation conducted the required meeting with Respondent, reviewing all of Respondent's conditions and deadlines.

Legal Conclusion: By failing to (1) timely file quarterly reports, as set forth above in paragraph 2 a.; (2) timely complete Ethics School, as set forth above in paragraph 2 b.; (3) timely submit a satisfactory LOMP, as set forth in above in paragraph 2. c; and (4) obtain psychiatric or psychological help/treatment as set forth above in paragraph 2. d., Respondent willfully violated Business and Professions Code, section 6068(k).

#### CIRCUMSTANCES WHICH WERE CONSIDERED IN THE RESOLUTION OF THIS MATTER.

Respondent's discipline became effective on December 9, 2011. In approximately September 2012, Respondent's father was hospitalized with pneumonia; Respondent's mother required assistance during his father's illness which required Respondent to spend a significant amount of time travelling between Respondent's home in Nevada City and his parents' home in Santa Barbara over a period of six weeks.

Respondent is a single father to the son he adopted through a step-parent adoption with his ex-wife four years before their marriage ended in dissolution. Respondent's son, now aged 15, has been diagnosed with Attention Deficit Disorder, Oppositional Defiant Disorder, Anxiety, Depression, and Sensory Integration Disorder. His son's mother lives in Texas and sees their son approximately once a year. As a single parent, it was difficult for Respondent to find time to travel to San Francisco or Los Angeles from their home in Nevada City to complete Ethics School.

Respondent's finances for 2012 and 2013 have been poor, impacting his ability to pay for the psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker ("counselor") required by his probation condition. Although he did not comply with his condition, Respondent did attend a twelve week Parent Project Parenting Class at the Community Recovery Resources service center which ended June 2013. Respondent has now found a counselor who meets the requirements of his probation condition, and Respondent has received counseling on December 13 and 17 even though his probation in this matter has terminated.

Respondent now understands that he needs to receive psychiatric or psychological help/treatment from a counselor who meets the requirements of his condition and that he needs to comply with each of his conditions on a timely basis; he understands that even if he experiences other problems, he must file a motion for modification at his earliest opportunity if he will be unable to complete his conditions and continue to comply with his conditions until an order is filed modifying his conditions.

#### PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was November 26, 2013.

#### AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.6, subsection (a), states that culpability of a member of a violation of Business and Professions Code, section 6068(k), shall result in disbarment or suspension depending upon the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

An attorney who violated his probation by failing to timely complete restitution and by failing to timely attend Ethics School, received two years' probation with a condition that he was to be actually suspended for the first 30 days. In the Matter of Gorman (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567. Neither bad purpose nor intentional evil is required to establish willful violations of disciplinary probation. *Id.* at 572. An attorney's cooperation in stipulating to facts warrants some mitigative consideration. *Id.* More serious sanctions are assigned to probation violations closely related to reasons for imposition of previous discipline or to rehabilitation. *Id.* at 573-574.

In this matter, Respondent's underlying disciplinary violation was in relation to failing to comply with his probationary conditions. The probation conditions violated were related to his original misconduct, important for his rehabilitation, and were intended to assist the State Bar in monitoring Respondent's rehabilitation. However, in light of Respondent's circumstances (set forth above), it is agreed that the



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degree of discipline set forth in this stipulation is appropriate in relation to standard 2.6 based upon Respondent's stipulation to his violations, and his agreement to extend his probation in order to demonstrate his willingness to prove his rehabilitation.

#### COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Probation has informed respondent that as of November 26, 2013, the prosecution costs in this matter are \$2,291. 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.

#### WAIVER OF ANY VARIANCES

The parties stipulate to waive any variance in the language, allegations, and conclusions of law between this stipulation and the Notice of Motion and Motion to Revoke Probation filed on October 25, 2013. Respondent acknowledges that this stipulation contains language, allegations, and a conclusion of law which may differ from the language, allegations, and conclusion of law contained in the Notice of Motion and Motion to Revoke Probation filed on October 25, 2013. The parties further stipulate to waive the right to have any amendment to the Notice of Motion and Motion to Revoke Probation.

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In the Matter of: David Scott Silber	Case number(s): 13-PM-16618
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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.

_____	_____	David Scott Silber
Date	Respondent's Signature	Print Name
_____	_____	Jonathan I. Arons
Date	Respondent's Counsel Signature	Print Name
12.20.13	<i>Terrie Goldade</i>	Terrie Goldade
Date	Deputy Trial Counsel's Signature Supervising Attorneys	Print Name

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In the Matter of: David Scott Silber	Case Number(s): 13-PM-1618-16618
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### PROBATION VIOLATION ORDER

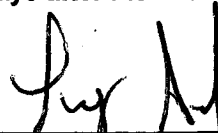
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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.)

Jan 8, 2014

Date



LUCY ARMENDARIZ  
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 San Francisco, on January 8, 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:

JONATHAN IRWIN ARONS  
LAW OFC JONATHAN I ARONS  
221 MAIN ST STE 740  
SAN FRANCISCO, CA 94105

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

TERRIE GOLDADE, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 8, 2014.



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Mazie Yip  
Case Administrator  
State Bar Court