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

Counsel For The State Bar Esther J. Rogers Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2258 Bar # 148246	Case Number (s) 14-O-04951-LMA	(for Court's use) <div style="text-align: center; font-size: 1.2em; font-weight: bold;">PUBLIC MATTER</div> <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center;">MAY 16 2016</div> <div style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>
Counsel For Respondent Samuel C. Bellicini Fishkin & Slatter, LLP 1575 Treat Blvd., Suite 215 Walnut Creek, CA 94598 (925) 944-5600 Bar # 152191	Submitted to: Program Judge <div style="text-align: center; font-weight: bold;">STIPULATION RE FACTS AND CONCLUSIONS OF LAW</div> <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: MICHAEL JOSEPH BAYTOSH Bar # 176189 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 1, 1995**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **10** pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."



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- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [see Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 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) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involved uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.
- (7) **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.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. See Attachment at page 7.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Lack of Candor/Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See Attachment at page 7.

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- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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. **See Attachment at Page 7.**
- (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.

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Additional mitigating circumstances:

See Attachment at Page 7-8.

**No Prior Record
Pretrial Stipulation**

completed the discovery responses or gathered the necessary documentation. Respondent knew the statements were false when he made them.

7. On June 12, 2014, York called respondent after the documents failed to arrive. Respondent informed York that he would arrange for the documents to be hand-delivered to her. In truth and in fact, respondent had not mailed anything to York and had not completed the discovery responses or gathered the necessary documentation. Respondent knew the statement was false when he made it.

8. On June 13, 2014, and June 14, 2014, York called respondent and spoke with respondent's assistant, who informed York that she would check with respondent and get back to York. No one responded to York. On June 18, 2014, York filed a motion for terminating sanctions. Respondent received the motion.

9. On June 25, 2014, respondent's assistant informed partner Michael LeVangie ("LeVangie") that respondent had failed to respond to plaintiffs' discovery. When LeVangie confronted respondent about the issue, respondent informed LeVangie that he had served the amended responses and respondent was awaiting the client's verifications. In truth and in fact, respondent had not served the amended responses and was not awaiting the client's verification. Respondent knew the statements were false when he made them.

10. On June 26, 2014, respondent informed LeVangie that respondent had failed to serve the amended responses and produce the required documents. Thereafter, LeVangie immediately assumed responsibility for the matter. On June 27, 2014, LeVangie delivered the required discovery to York.

11. On July 3, 2014, respondent submitted to the court a declaration in opposition to the plaintiffs' motion for sanctions in which respondent stated the following:

- "[A]t times I tried to avoid the issue and felt constrained to mislead my firm and plaintiffs' counsel as to the status of the responses;"
- "I misled Plaintiffs' counsel by indicating that responses were served following the Court's Order and that I would hand-deliver additional copies to them if they were somehow not delivered in the normal process of the mail. This statement was untrue;"
- "I advised the partners amended responses were served on Plaintiffs' counsel but we were simply awaiting verifications from the client. This statement was untrue."

12. On July 11, 2014, the court issued a tentative ruling imposing terminating sanctions due to respondent's wilful failure to comply with court orders. It also found that respondent "failed to act in good faith or with reasonable diligence, but instead has made repeated false representations as to the status of the discovery responses to plaintiffs' counsel, his employer, and by implication, to his clients."

13. On July 17, 2014, the court revised its tentative ruling and began its discussion by stating that, "The facts underlying this motion are deeply troubling to the Court." The court also "admonishe[d] [respondent] for his conduct. Such conduct is in violation of the oath of an attorney to faithfully discharge the duties of an attorney to the best of his knowledge and ability and involve moral turpitude, in that they are a breach of the fiduciary relation which binds him to the most conscientious fidelity to his clients' interests."

14. Ultimately, the court determined that a terminating sanction was inappropriate because it would be unfair to impute respondent's neglect to his client. The court also imposed additional sanctions

against respondent, and Prout LaVangie, jointly and severally, in the amount of \$7,110. Prout LeVangie paid both sets of sanctions, totaling approximately \$24,000. In August 2014, respondent was terminated from Prout LeVangie. Respondent did not reimburse Prout LeVangie for the sanctions it paid as a result of respondent's failure to comply with his discovery obligations.

CONCLUSIONS OF LAW:

15. By failing to prepare and serve discovery responses, failing to oppose the motion to compel further responses, permitting discovery sanctions to be issued against his client, and failing to provide the discovery responses after the court ordered respondent to provide them, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

16. By failing to comply with the court's eight May 6, 2014 orders requiring respondent to provide discovery responses by May 16, 2014, respondent disobeyed an order of the court requiring him to do an act in the course of his profession, which he ought in good faith do, in willful violation of Business and Profession Code section 6103.

17. By making misrepresentations regarding the status of the discovery responses to opposing counsel and his employer, respondent engaged in acts of moral turpitude, dishonesty and corruption, in willful violation of Business and Profession Code section 6106.

AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.5(f)): Respondent's repeated failures to respond to discovery, concealment of his failures to respond to discovery from his employer and client, and his failure to comply with court orders, harmed his client and his employer. Respondent's failures to respond to discovery required the opposing party and the court to expend time and resources to enforce respondent's discovery obligations, and thereby harmed the administration of justice and public confidence in attorneys.

Multiple Acts (Std. 1.5(b)): Respondent's failure to perform, violation of court orders and misrepresentations comprise multiple acts.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: At the time of the misconduct, respondent had practiced law for eight years without a prior record of discipline. Although respondent's misconduct is serious, his eight-year discipline-free practice is a mitigating circumstance. (See *In the Matter of Riordan* (Review Dept. 2007 5 Cal. State Bar Ct. Rptr. 41 [where mitigative credit given for discipline-free practice despite serious conduct].)

Good Character (Std. 1.6(f)): Respondent has offered evidence of good character through (list the witnesses and their significance. These witnesses understand the facts of respondent's misconduct, yet they continue to maintain their high regard for respondent's character and competence.

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

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of November 5, 2015, the prosecution costs in this matter are approximately \$4,000. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

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

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In the Matter of: MICHAEL JOSEPH BAYTOSH	Case number(s): 14-O-04951-LMA
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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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

<u>12-15-2015</u> Date	<u>Michael J Baytosh</u> Respondent's Signature	<u>MICHAEL JOSEPH BAYTOSH</u> Print Name
<u>10 Dec. 2015</u> Date	<u>[Signature]</u> Respondent's Counsel Signature	<u>SAMUEL C. BELLICINI</u> Print Name
<u>1/4/16</u> Date	<u>Esther Rogers</u> Deputy Trial Counsel's Signature	<u>ESTHER J. ROGERS</u> Print Name

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 May 16, 2016, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

By personally delivering a copy of said document(s) to:

ROBERT HENDERSON

~~ESTHER J. ROGERS~~

180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

SAMUEL C. BELLICINI

180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 16, 2016.



Bernadette Molina
Case Administrator
State Bar Court