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State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION **PUBLIC MATTER**

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<p>Counsel For Respondent</p> <p>Edward O. Lear Century Law Group LLP 5200 W Century Blvd, Suite 345 Los Angeles, CA 90045 (310) 642-6900</p> <p>Bar # 132699</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: MARC STEVEN DUVERNAY</p> <p>Bar # 135547</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 **September 22, 1988**.
- (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 **14** 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."



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- (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: (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(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 involves 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.

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- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. See page 9.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Candor/Lack of 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.
- (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.

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- (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 page 9.**
- (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 Record of Discipline, see page 9.

Remorse and Recognition of Wrongdoing, see page 9.

Pretrial Stipulation, see page 9.

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 fitness to practice and present learning and ability in the general 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 **two (2) 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 **ninety (90) days**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct

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- 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 present 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: .

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- (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) **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.**
- 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: **March 16, 2018.**
- (5) **Other Conditions: Lawyer's Assistance Program Conditions, see page 12.**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MARC STEVEN DUVERNAY
CASE NUMBER: 17-C-05303-CV

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 other misconduct warranting discipline.

Case No. 17-C-05303 (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 March 15, 2017, the Los Angeles County District Attorney filed a criminal complaint in the Los Angeles County Superior Court, case no. SA095197, charging respondent with one count of violation of Vehicle Code, section 23153(a) [Driving under the influence of an alcoholic beverage (“DUI”) causing injury], a felony, and one count of violation of Vehicle Code, section 23153(b) [Driving with a 0.08% blood alcohol content causing injury], a felony. The complaint further alleged that, as to both counts, respondent inflicted great bodily injury upon another within the meaning of Penal Code section 12022.7(a), causing said offense to become a serious felony within the meaning of Penal Code section 1192.7(c)(8).
3. On August 7, 2017, the court entered respondent’s plea of *nolo contendere* to violation of Vehicle Code section 23153(b), a felony, with an enhancement of Penal Code section 12022.7(a) (infliction of great bodily injury during the commission of a felony). Respondent was placed on formal probation for a period of five years and sentenced to five days in jail, with credit for two days served. Respondent was also required to enroll and participate in and successfully complete a nine-month licensed first-offender alcohol and other drug education and counseling program, and to have an interlock ignition device installed in his vehicle. Respondent was also required to make restitution to the victim, the amount of which was to be determined at a restitution hearing. On April 6, 2018, a restitution hearing was held, wherein restitution was deemed satisfied after respondent’s insurance company paid \$300,000 to the victim’s wife in settlement of all claims related to the injuries sustained by the victim.
4. On February 21, 2018, 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 finds that the facts and circumstances surrounding the offenses for which respondent was convicted involved moral turpitude or other misconduct warranting discipline. The Review Department further ordered that respondent be suspended from the practice of law, effective March 16, 2018, pending final disposition of the proceeding.

FACTS:

5. On February 16, 2017, respondent was involved in an automobile collision with a parked vehicle near the MountainGate Country Club ("the club") in Los Angeles, California. He attended a team golfing event at the club earlier that day beginning around 11:00 a.m. After playing golf at approximately 5:30 p.m. respondent and other attendees moved to the clubhouse for light food and drinks, at which point respondent began to consume alcohol. Respondent consumed four scotch drinks with dinner and hors d'oeuvres between 5:30 p.m. and 8:30 p.m. At around 8:40 p.m., respondent began packing up his belongings and getting ready to drive back to his home, which was about 15 miles away from the club. Respondent drove out of the parking lot and began going down the adjacent hill when, about 150 yards down the hill, a deer darted out in front of his car. Respondent swerved and hit the median, went over the median and collided into a parked car, where a person was seated in the driver's seat ("victim").

6. The victim was in the driver's seat of his vehicle and was parked along the south curb of eastbound Mountaingate Drive at the time of the collision. He was wearing his seatbelt and did not see respondent's vehicle before it rear-ended him, causing his airbags to deploy. The victim was admitted to the hospital that evening. The victim suffered a fractured right shoulder, fractured vertebrae in his neck, fractured clavicle, and a lacerated spleen. The victim was discharged from the hospital on February 20, 2017 (4 days after admission).

7. Officers from the Los Angeles Police Department ("LAPD") arrived at the scene of the accident at approximately 9:20 p.m. When they arrived, they observed respondent's vehicle resting atop the north curb of Mountaingate Drive with major damage to the front of the vehicle. The victim's vehicle was resting atop the south curb of Mountaingate Drive with major damage to the rear of the vehicle.

8. The officers approached respondent when they arrived on scene and immediately smelled the odor of alcohol on his breath. His speech was slurred and his eyes were watery and bloodshot. Respondent stated that he had "a couple of drinks" at the club. Due to respondent having displayed objective signs of intoxication, one of the LAPD officers decided to administer a field sobriety test ("FST"). Due to the steep incline of Mountaingate Drive and the fact it was just starting to rain and the ground was slippery, the officer transported respondent to West LA police station to complete the FST. Respondent and the victim's vehicle were impounded.

9. During the FST at the West LA police station, respondent continued to have difficulty maintaining balance and following instructions. Respondent submitted to a breath test which resulted in a reading of 0.14% Blood Alcohol Content ("BAC").

10. On April 3, 2017, respondent enrolled in the State Bar's Lawyer Assistance Program ("LAP") and is currently participating in the program.

11. On June 21, 2017, the victim passed away as a result of an occurrence unrelated to his accident injuries.

CONCLUSIONS OF LAW:

12. The facts and circumstances surrounding the above-described violation do not involve moral turpitude but do involve other misconduct warranting discipline.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Significant Harm (Std. 1.5(j)): In addition to the bodily injury, respondent's misconduct caused serious property damage to the victim's vehicle as well as emotional harm to the victim and his wife. The victim's wife filed a loss of consortium claim based on the adverse effects the victim's injuries had on the couple's marital relationship during the months between the accident and his death. (*In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360, 368 ["Kinney's relentless litigation campaigns inflicted serious financial and emotional harm on his Fernwood neighbors and on the Smedbergs," considered in aggravation].)

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent was admitted to the State Bar of California in 1988 and has no prior record of discipline. Respondent's 28 years of discipline free practice prior to the time of the misconduct is entitled to significant mitigating weight. (*In the Matter of Friedman* (1990) 50 Cal. 3d 235, 245 [more than 20 years of unblemished record was "highly significant"].)

Good Character (Std. 1.6(f)): Respondent has presented twenty-one (21) declarations from a wide range of references in the legal and general communities, who have all stated in their respective declarations that they are fully aware of the misconduct and who have attested to his good character. All twenty-one declarants have been acquainted with respondent either socially or professionally for a significant period of time, are from varied backgrounds, eight of which are from the legal community. The character declarations speak to respondent's honesty, integrity, and trustworthiness and dedication towards his clients and helping others. All of the witnesses state in their respective declarations that they are informed of the misconduct surrounding the DUI conviction and many of the witnesses believe the misconduct to be aberrational and out of character.

Remorse and Recognition of Wrongdoing: Respondent voluntarily enrolled in LAP on April 3, 2017, prior to conviction in the criminal proceeding. Respondent is currently participating in LAP and has not consumed any alcohol since the accident.

Pretrial Stipulation: Respondent admitted to the misconduct and entered into this stipulation fully resolving this matter prior to trial. Respondent's cooperation at this stage will save the State Bar resources and time. Respondent's cooperation in this regard is a mitigating factor in this resolution (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigation 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 2.16(a) indicates that actual suspension is the presumed sanction for final conviction of a felony not involving moral turpitude, but involving other misconduct warranting discipline. While drunk driving is not an act of moral turpitude *per se*, it warrants discipline. (*In re Kelley* (1990) 52 Cal.3d 487 [public reproof where respondent was convicted of second DUI while on probation for first DUI].)

In aggravation, respondent’s misconduct, in addition to the great bodily injury caused to the victim, caused serious property damage to both his own vehicle and to the victim’s vehicle and negatively impacted the victim’s married life during the months between the accident and his death. (Std. 1.5(j); *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360, 368 [“Kinney’s relentless litigation campaigns inflicted serious financial and emotional harm on his Fernwood neighbors and on the Smedbergs,” considered in aggravation].)

Respondent is entitled to significant mitigation for his lack of a prior disciplinary record since being admitted in 1988 (28 years of practice as of the time of the misconduct). (*In the Matter of Friedman* (1990) 50 Cal. 3d 235, 245 [more than 20 years of unblemished record was “highly significant”].) Furthermore, respondent has provided declarations from twenty-one (21) people from both the general and legal communities who are all aware of the misconduct and believe that it was aberrational and that he is a man of honesty, integrity, and trustworthiness. (*In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330, 335 [significant mitigating weight for attestations of good character from eleven witnesses from varied backgrounds].) Finally, respondent will receive significant mitigating weight for his voluntary enrollment in LAP, which was not a condition of his criminal probation. (*In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, 291 [significant mitigating weight given where attorney pled no contest to criminal charge and admitted during disciplinary proceeding that he showed a “significant lapse in judgment” and voluntarily enrolled in parenting courses beyond those ordered as criminal probation].)

The mitigating circumstances here, though significant, do not outweigh the aggravating circumstances and the seriousness of respondent’s felony conviction, which resulted in serious injury to the victim, that it would justify a downward deviation from the standards. (*In re Nevill* (1985) 39 Cal.3d 729, 753 [“Where an attorney’s criminal act involves actual physical harm to a particular individual, the necessary showing of mitigating circumstances increases accordingly. [Citations.]”].)

Given the misconduct, the facts and circumstances surrounding the misconduct, and the aggravation and mitigating circumstances, a two-year period of stayed suspension and a two-year period of probation with conditions including an actual suspension of ninety (90) days and substance abuse conditions, including participation in LAP, is sufficient to achieve the purposes of discipline expressed in standard 1.1, including protection of the public.

Case law supports this level of discipline. There are no published cases involving a first time felony DUI conviction with no moral turpitude. However, *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406 is instructive where, like respondent, the attorney was convicted of a felony, causing great bodily injury to another, which was found not to have involved moral turpitude. Burns was convicted of assault with a firearm with the enhancement that he discharged a firearm at an occupied motor vehicle which caused great bodily injury to the person of another, a felony. No aggravating circumstances were found. The court gave significant mitigating credit for (i) the attorney's pro bono activities; (ii) the attorney's good faith belief that he was in imminent danger of being shot at again when he fired; (iii) criminal court's reduction of the offense from a felony to a misdemeanor; (iv) lack of client harm; and (v) the attorney's expression of remorse for the incident and for the injury that resulted. "[G]iven the totality of the circumstances, including the fact that respondent [had] already been suspended for ten and one-half months as the result of this conviction," the Review Department recommend a two-year period of stayed suspension along with a two-year period of probation with conditions. (*Id.* at p. 416.)

Unlike *Burns*, where the hearing judge found, and the Review Department agreed, that respondent had a good faith belief that he was acting in self-defense when he fired his gun, respondent intentionally drove while under the influence of alcohol. Furthermore, Burns's felony conviction was ultimately reduced to a misdemeanor at sentencing, which the Review Department viewed as an indication of the criminal court's view of the seriousness of the criminal conduct, and thus relevant to the issue of the appropriate level of discipline. (*In the Matter of Burns, supra*, 3 Cal. State Bar Ct. Rptr. at p. 413.) Respondent, on the other hand, was convicted of a "serious felony" within the meaning of Penal Code section 1192.7(c)(8) and sentenced accordingly.

Mitigating circumstances present in the *Burns* case – evidence of good character and remorse and recognition of wrongdoing - are also present here. However, respondent has had 28 years of discipline free practice as of the time of the misconduct – four times the length of time the attorney in *Burns* practiced (7 years) prior to his misconduct, which is entitled to significant mitigating credit. (*In the Matter of Burns, supra*, 3 Cal. State Bar Ct. Rptr. at p. 412 [Burns' lack of a prior disciplinary record during his 7 years of pre-misconduct practice not considered to be a strong mitigating factor].) Furthermore, respondent, in addition to expressing remorse for the misconduct, has taken prompt, objective steps to demonstrate his remorse and recognition of wrongdoing by enrolling in LAP shortly after the incident, but before the criminal conviction.

Taking into account the totality of the circumstances and the balancing of aggravating and mitigating circumstances, a level of discipline commensurate to that imposed in *Burns* is appropriate here. However, a period of stayed suspension without actual suspension is not appropriate, where respondent has served less than 60 days in interim suspension as of the date of filing of this stipulation, and not the lengthy period of ten and one-half months of interim suspension served by Burns, which was one of the reasons articulated by the Review Department in not imposing a period of prospective actual suspension in *Burns*. (*In the Matter of Burns, supra*, 3 Cal. State Bar Ct. Rptr. at p. 416.) Given the seriousness of respondent's misconduct and that "[t]he community's interest in prosecuting driving under the influence cases has increased dramatically," a substantial period of suspension is warranted to preserve the integrity of the legal profession. (*People v. Ford* (1992) 4 Cal.App.4th 32, 38.)

Based on the totality of circumstances and weighing the aggravating and mitigating circumstances, the imposition of a 90-day period of actual suspension in this matter is appropriate to achieve the purposes of discipline expressed in standard 1.1.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of May 3, 2018, the discipline costs in this matter are \$2,629. 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.

LAWYER'S ASSISTANCE PROGRAM.

1. During the probation period, respondent must continually participate in LAP, and comply with all participation conditions of LAP, including respondent's Monitoring Plan, or any modification to any such plan or agreement (the "Plan"). Respondent must pay the expenses of LAP participation. Voluntary or involuntary termination from LAP constitutes a violation of this probation.
2. Within 10 days of signing this stipulation, respondent must provide a complete copy of this stipulation to the assigned LAP Clinical Rehabilitation Coordinator and obtain a letter from LAP acknowledging its receipt of the stipulation. Respondent must attach a copy of LAP's acknowledgement letter to the first quarterly probation report required by these conditions of probation.
3. Within 30 days of the effective date of discipline, respondent shall:
 - (a) sign a LAP waiver form promulgated by the Office of Probation and deliver it to the Office of Probation. The LAP waiver will authorize LAP to release information and documents to the Office of Probation, the Office of Chief Trial Counsel, and the State Bar Court, including but not limited to the terms and conditions of the Plan, any subsequent modifications to the Plan, respondent's compliance or failure to comply with the Plan, and the reasons for any decision to terminate respondent from the LAP. Revocation of the LAP waiver constitutes a violation of probation; and
 - (b) provide a complete copy of the Plan and any modifications to the Office of Probation.
4. Within five days of occurrence, respondent shall notify the Office of Probation of any of the following:
 - (a) that the Plan has been modified, in which case respondent shall simultaneously provide the Office of Probation a copy of the modified Plan;
 - (b) that respondent has violated any of the terms and conditions of the Plan;
 - (c) that respondent has revoked the LAP waiver; and
 - (d) that respondent has been voluntarily or involuntarily terminated from the LAP.
5. For each of the quarterly probation reports and the final report required under the terms of this probation, respondent must:

(a) report whether respondent has complied or not complied with the terms and conditions of the Plan during the period covered by the report;

(b) instruct LAP in writing to (1) issue a narrative account concerning respondent's participation, compliance and/or non-compliance with the terms and conditions of the Plan during the period covered by the probation report and (2) provide the narrative account to the Office of Probation on or before due date for respondent's probation report. Respondent must deliver this written instruction to LAP between 10 and 20 days before respondent's probation report is due; and

(c) respondent shall attach a copy of the letter of instruction to the probation report.

EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT.


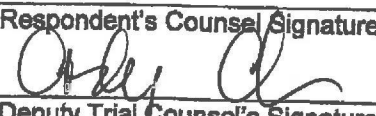
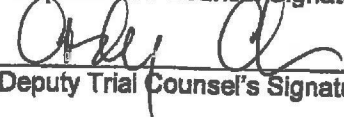
Respondent may not receive MCLE credit for completion of Ethics School required by section (E)(8) of this stipulation. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: MARC STEVEN DUVERNAY	Case number(s): 17-C-05303
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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>5-8-18</u> Date	<u></u> Respondent's Signature	<u>MARC STEVEN DUVERNAY</u> Print Name
<u>5/10/2018</u> Date	<u></u> Respondent's Counsel Signature	<u>EDWARD O. LEAR</u> Print Name
<u>5/10/2018</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>CINDY CHAN</u> Print Name

(Do not write above this line.)

In the Matter of: MARC STEVEN DUVERNAY	Case number(s): 17-C-05303
--	--------------------------------------

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.

Date	<u>5/7/18</u>	Respondent's Signature		<u>MARC STEVEN DUVERNAY</u>	Print Name
Date		Respondent's Counsel Signature		<u>EDWARD O. LEAR</u>	Print Name
Date		Deputy Trial Counsel's Signature		<u>CINDY CHAN</u>	Print Name

(Do not write above this line.)

In the Matter of: MARC STEVEN DUVERNAY	Case Number(s): 17-C-05303
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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.
1. On page 1 of the stipulation, in case caption, the phrase "Submitted to: Settlement Judge," is CORRECTED to read "Submitted to: Assigned Judge."
 2. On page 1 of the stipulation, in paragraph (A)(3), in the last line, the number "14" is CORRECTED to read "15."
 3. On page 2 of the stipulation, in paragraph (A)(8), the "X" in the first box is DELETED; an "X" is INSERTED in the second box; and the year "2019" is INSERTED at the end of the first line.
 4. On page 6 of the stipulation, in paragraph F(5), at the end of the paragraph, the phrase "see page 12" is CORRECTED to read "see pages 12 and 13."
 5. On page 11 of the stipulation, in the first paragraph, in the third and fourth lines, the phrase "and substance abuse conditions, including participation in LAP," is CORRECTED to read "and participation in LAP."
 6. The stipulation contains two pages that marked "Page 14"; the second page marked "Page 14" is CORRECTED and marked "Page 15."

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.)**

May 31, 2018
Date

Cynthia Valenzuela
CYNTHIA VALENZUELA
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 Court Specialist 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 May 31, 2018, 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:

**EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045**

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

CINDY W.Y. CHAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 31, 2018.



Paul Barona
Court Specialist
State Bar Court