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State Bar Court of California Hearing Department San Francisco REPROVAL		
Counsel for the State Bar Melissa G. Murphy Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2527 Bar # 304445	Case Number(s): 18-C-12747-MC	For Court use only PUBLIC MATTER FILED DEC 07 2018 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Megan E. Zavieh 12460 Crabapple Rd. Suite 202-272 Alpharetta, GA 30004 (510) 936-1534 Bar # 206446	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: OANH KIM TRAN Bar # 251062 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 **November 19, 2007**.
- (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 **16** 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):
- It is ordered that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.
 - Case ineligible for costs (private reproof).
 - It is ordered that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. **SELECT ONE** of the costs must be paid with Respondent's membership fees for each of the following years:

If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be 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 reproof 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 reproof 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 reproof 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 reproof 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(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) Prior record of discipline:
- (a) State Bar Court case # of prior case:

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- (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.
 - (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **Please see page 12.**
 - (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
 - (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's 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 [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.

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- (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 Respondent's misconduct or to the State Bar during disciplinary investigation 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 Respondent's 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 Respondent.
- (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 Respondent, 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 Respondent's control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's 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 Respondent's 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 Record of Discipline. Please see page 12.
Pre-trial Stipulation. Please see page 12.
Recognition of Wrongdoing. Please see pages 12-13.

D. Discipline:

Discipline – Reproval

Respondent is **Publicly** reprovaled. Pursuant to the provisions of rule 5.127(A) of the Rules of Procedure of the State Bar, this reprovale will be effective when this stipulation becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the protection of the public and the interests of Respondent will be served by the following conditions being

attached to this reproof. Failure to comply with any condition attached to this reproof may constitute cause for a separate disciplinary proceeding for willful breach of rule 1-110 of the State Bar Rules of Professional Conduct. Respondent is ordered to comply with the following conditions attached to this reproof for **two years** (Reproof Conditions Period) following the effective date of the reproof.

- (1) **Review Rules of Professional Conduct:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.
- (2) **Comply with State Bar Act, Rules of Professional Conduct, and Reproof Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's reproof.
- (3) **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR within ten (10) days after such change, in the manner required by that office.
- (4) **Meet and Cooperate with Office of Probation:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 45 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the Reproof Conditions Period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's Reproof Conditions Period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with reproof conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) **Quarterly and Final Reports:**
 - a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the Reproof Conditions Period. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the Reproof Conditions Period and no later than the last day of the Reproof Conditions Period.

- b. Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
- c. Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
- d. Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after the Repeal Conditions Period has ended. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (7) **State Bar Ethics School:** Within one year after the effective date of the order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session.
- (8) **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because
- (9) **State Bar Client Trust Accounting School:** Within one year after the effective date of the order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session.
- (10) **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within _____ after the effective date of the order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete _____ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity.
- (11) **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the Repeal Conditions Period, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

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- (12) **Minimum Continuing Legal Education (MCLE):** Within _____ after the effective date of the order imposing discipline in this matter, Respondent must complete _____ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in **SELECT ONE** _____ and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity.
- (13) **Other:** Respondent must also comply with the following additional reprobation conditions:
- (14) **Multistate Professional Responsibility Examination Within One Year:** It is further ordered that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)
- (15) **The following conditions are attached hereto and incorporated:**
- Financial Conditions
 - Medical Conditions
 - Substance Abuse Conditions

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Substance Abuse Conditions

- a. **Abstinence:** Respondent must abstain from using alcoholic beverages and must not use or possess any illegal drugs or illegal drug paraphernalia. In each quarterly and final report, Respondent must report compliance with this condition.
- b. **Abstinence Program Meetings:** Respondent must attend a minimum of 12 meetings per quarter of an abstinence-based self-help group approved by the Office of Probation. Programs that are not abstinence-based and allow the participant to continue consuming alcohol are not acceptable. Respondent must contact the Office of Probation and obtain written approval for the program Respondent wishes to select prior to receiving credit for compliance with this condition for attending meetings of such group. Respondent must provide to the Office of Probation satisfactory proof of attendance at such group meetings with each quarterly and final report; however, in providing such proof, Respondent may not sign as the verifier of such attendance.
- c. **Laboratory Testing:** Within 45 days after the effective date of the SELECT ONE order imposing discipline in this matter, Respondent must select a licensed medical laboratory or laboratories acceptable to the Office of Probation and having the capability to provide observed testing of Respondent as specified below. Respondent must provide a copy of this condition and of the Office of Probation Lab Test Information Sheet to each and every laboratory Respondent uses to perform any portion of the testing required to comply with this probation condition. In the event that Respondent subsequently is informed or learns that any laboratory, previously approved by the Office of Probation to conduct the testing set forth below, is no longer willing or able to perform such testing in the manner set forth below, Respondent must (1) notify the Office of Probation in writing of that fact within 72 hours after acquiring such information, and (2) select a new licensed medical laboratory, acceptable to the Office of Probation and capable of providing observed testing of Respondent as specified below, sufficiently promptly that Respondent will be able to continue to comply timely with the testing requirements set forth below.

After the expiration of the first 60 days of Respondent's probation/reproval, Respondent must be tested monthly, at Respondent's expense, during the first five (5) days of each remaining calendar month of Respondent's probation/reproval conditions period to show that Respondent has abstained from the use of alcohol and drugs. This testing will include an ethyl glucuronide (EtG) test and a ten-panel drug test (or equivalent tests accepted and approved in advance by the Office of Probation) and for drugs and other substances specified by the Office of Probation, including but not necessarily limited to alcohol, amphetamines, methamphetamines, barbiturates, benzodiazepines, cocaine metabolite, opiates, oxycodone, marijuana, methadone, and propoxyphene. These tests must be performed by the laboratory pursuant to United States Department of Transportation guidelines, and all testing must be observed. Respondent must comply with all laboratory requirements regarding specimen collection and the integrity of specimens.

In addition to the monthly testing, the Office of Probation may require Respondent to undergo up to additional tests per month, as described above, during the period of Respondent's probation/reproval conditions period, at times selected by the Office of Probation on a random basis. During the period of probation/reproval conditions period, Respondent must maintain with the Office of Probation a current telephone number and email address at which Respondent can be reached. Such tests are to be performed by the laboratory no later than eight (8) hours after the Office of Probation's email and telephone call to Respondent that the Office of Probation requires such additional testing.

For each test, Respondent must instruct the laboratory to provide a screening report directly to the Office of Probation, at Respondent's expense, that contains an analysis of the above tests, shows that each tested

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sample was properly obtained, and demonstrates that the above testing requirements were satisfied. Failure to provide, or revocation of, such instruction for a particular required test may be deemed a failure to comply with this condition. Each screening report must be provided directly to the Office of Probation at or before the time that its results are disclosed to Respondent and within ten (10) days after the time that the tested sample is provided to the laboratory. Each report must record the date and time of the testing, list all of the substances for which Respondent was tested, and show the individual results for each such substance. An overall synopsis, e.g., "negative," with no specific breakdown, is not sufficient. In the event a previously selected and approved laboratory fails to provide the Office of Probation with test results or screening reports meeting the above requirements within two weeks of testing, the Office of Probation may require Respondent to choose a different licensed medical laboratory, approved by the Office of Probation, for future testing.

- d. **Medical Waivers:** Within 45 days after the effective date of the SELECT ONE order imposing discipline in this matter, Respondent must provide the Office of Probation with an authorization to disclose and obtain medical information (medical waiver) and access to all of Respondent's medical records related to Respondent's substance abuse problem for the period . Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, the Office of Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing, or adjudicating this probation/reproval condition.
- e. **Other: Respondent must meet with her AA sponsor once a week.**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: OANH KIM TRAN

CASE NUMBER: 18-C-12747-MC

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which she was convicted involved other misconduct warranting discipline.

Case No. 18-C-12747-MC (Conviction Proceeding)

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 May 8, 2014, the Alameda County District Attorney's Office filed a criminal complaint in Alameda County Superior Court, Case Number 253444, charging respondent with: (Count One) a violation of Vehicle Code, section 23152(a) (unlawfully driving a vehicle under the influence of alcohol); (Count Two) a violation of Vehicle Code, section 23152(b) (unlawfully driving a vehicle with a blood alcohol content of a .08% or higher) and (Count Three) a violation of Vehicle Code, section 22349(a) (speeding greater than 65 miles per hour). Respondent was also charged with an enhancement for a prior driving under the influence ("DUI") conviction within ten years.
3. On June 19, 2014, respondent entered a plea of No Contest to a violation of Vehicle Code, section 23152(b) (unlawfully driving a vehicle with a blood alcohol content of a .08% or higher) (Count Two) with the prior offense enhancement. Counts One and Three were dismissed as part of a negotiated plea.
4. The judge accepted the plea, entered a conviction, and sentenced respondent to 10 days in county jail, credit for one day served, the remaining nine days to be served in the Alameda County Sheriff Weekend Work Program, three years' probation, with conditions including obey all laws, report to court when ordered to do so, submit to alcohol detection test as requested by a peace officer, not drive unless properly licensed and insured, not drive with any measurable amount of alcohol in blood, enroll in and complete 18-month Drinking Driver program, use Ignition Interlock Device, as required by the DMV, comply with any other restrictions required by the DMV and pay assessed fines.
5. On September 9, 2018, the Review Department of the State Bar issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department found the facts and

circumstances surrounding the offense for which the respondent was convicted involved moral turpitude or other conduct involving discipline.

FACTS:

1. On April 20, 2014, at approximately 3:01 a.m., respondent drove a motor vehicle while under the influence of alcohol. While driving a gray Toyota, respondent passed other vehicles on Interstate Highway 880 in Fremont at a high rate of speed. Respondent's car was weaving within its lane and traveling at approximately 78 miles per hour.
2. Officer D. Arriaga of the California Highway Patrol ("CHP") observed respondent's speeding and weaving, stopped the Toyota and spoke to respondent. The car smelled of alcohol. Respondent had an odor of alcohol on her breath, her eyes were red and watery and her speech was thick and slurred.
3. Respondent admitted to Officer Arriaga that she had been drinking wine at a hotel in San Mateo, but stated she could not say how much alcohol she consumed.
4. Officer Arriaga administered four field sobriety tests. The first was the Horizontal Gaze Nystagmus Test where respondent lacked smooth pursuit in both eyes, distinct sustained nystagmus in both eyes and an angle of onset prior to 45 degrees in both eyes. Respondent was unable to perform the final three tests, including the One Leg Stand, the Modified Romberg Balance test and the Walk and Turn test, as explained and demonstrated. Her Preliminary Alcohol Screening (PAS) results were .167% and .157%.
5. Respondent was placed under arrest and transported to the Fremont Police Department where Officer Arriaga administered a breath test at 3:38 a.m. and 3:40 a.m. with the results being a Blood Alcohol Content ("BAC") of .16% and .16%. Respondent was respectful and cooperative throughout her contact with police.
6. At the time of respondent's arrest, she had five days remaining on her probation for a prior DUI, as will be discussed later.

RESPONDENT'S PRIOR CONVICTION:

6. On February 24, 2011, at approximately 1:00 a.m., respondent was driving a gray Toyota while under the influence of alcohol on State Route 4 in Contra Costa County.
7. Respondent was stopped by CHP Officer J.L. Tyhurst. Respondent had an odor of alcohol on her breath. Respondent admitted to Officer Tyhurst that she had consumed two to three glasses of wine.
8. Officer Tyhurst administered a series of field sobriety tests, which respondent did not perform as explained and demonstrated. Her PAS results were .145% and .138%.
9. Respondent was placed under arrest and transported to the Hayward CHP station where Officer Tyhurst administered a breath test with BAC results of .14% and .14%.

10. On April 25, 2011, respondent entered a plea of nolo contendere in Contra Costa County Superior Court Case Number 4-168760-7 to a violation of Vehicle Code, section 23103 pursuant to Vehicle Code, section 23103.5, which is commonly referred to as a “wet reckless.” Respondent was sentenced to two days county jail to be served in the Contra Costa County Sheriff’s Work Alternative Program. Respondent also was placed on probation for three years, required to enroll in and complete a First Offender Drinking Driver Program, obey all laws, submit to alcohol detection tests as requested by a peace officer, not to drive unless properly licensed and insured, not to drive with any measurable amount of alcohol in blood and pay assessed fines.

CONCLUSIONS OF LAW:

11. The facts and circumstances surrounding the above described conviction do not involve moral turpitude, but do involve other misconduct warranting discipline.

AGGRAVATING CIRCUMSTANCES.

Significant Harm (Std. 1.5(j)): Respondent caused significant harm to the administration of justice. She was convicted for driving under the influence of a high level of alcohol while she was a Deputy District Attorney. At the time of her second arrest, she still had five days remaining on her term of probation for her first offense. Respondent’s actions were serious, compromised the safety of others and violated an order of a court that she obey all laws and not drive with any of measure of alcohol in her blood.

MITIGATING CIRCUMSTANCES.

Pre-trial Stipulation: By entering into this stipulation, respondent has acknowledged her misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [mitigative credit given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [attorney's stipulation to facts and culpability is mitigating].)

No Prior Record of Discipline: Respondent was admitted to the practice of law in California on November 19, 2007, and had been practicing for approximately six and one-half years at the time of her second offense. (See *Kelly v. State Bar* (1988) 45 Cal. 3d 679 [seven and one-half years of practice not especially commendable.]) Further, respondent’s first conviction occurred after respondent was in practice for approximately three years and three months. Her prior conviction diminishes the weight to be given to respondent’s lack of prior discipline.

Recognition of Wrong Doing (Std. 1.5g): After her second conviction, respondent realized she was an alcoholic and took prompt and sustained steps to address her addiction. She demonstrated

spontaneous remorse, recognition of wrongdoing and timely atonement. After her arrest in April 2014, respondent stopped drinking alcohol. She ended personal relationships with certain friends and family members who did not believe abstinence was necessary for her recovery. She voluntarily enrolled in and successfully completed both a two-week Kaiser Chemical Dependency Program and a six-month Phase 2 Group Therapy Program. Respondent also successfully completed the court-ordered 18-month multiple offender program. She successfully completed her three-year criminal probation and drove for two years with an Installed Ignition Interlock Device on her car until her unrestricted license was restored by the Department of Motor Vehicles. Respondent began attending Alcoholic Anonymous (“AA”) meetings immediately after her April 2014 arrest and has continued to participate in AA for over four and a half years. Respondent meets every Friday at 7:00 p.m. with her long-time AA sponsor. Her sponsor confirmed respondent’s ongoing commitment to sobriety and indicated that she would continue to sponsor respondent in the years to come. Respondent reported her arrests to her supervisors in the District Attorney’s Office. After serving suspensions without pay and benefits, respondent returned to the District Attorney’s Office to prosecute sex crimes for four years without further incident. She handled her caseload while maintaining her sobriety and completing three sobriety programs. Respondent did this initially without a license, relying on friends and family as well as on public transportation to insure she met all her professional and therapeutic commitments. In 2017, respondent was nominated for Prosecutor of the Year in Santa Clara County and recently was promoted to the Homicide Unit. After her second arrest, respondent immediately expressed deep remorse for her conduct. She has taken substantial and sustained steps to successfully address her alcohol addiction and has been sober and professionally productive for more than four and a half years.

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.)

For the purpose of attorney discipline, respondent’s conviction is conclusive proof of the elements of her crime (See Business and Professions Code, sections 6101(a) & (e); *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813, 820.) Thus, respondent’s 2014 DUI misdemeanor conviction establishes that she drove under the influence of alcohol with a BAC of at least 0.08% with an admitted prior conviction within 10 years.

In the context of attorney discipline, a crime involves moral turpitude if it reflects, “a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that the knowledge of the attorney’s conduct would be likely to undermine public confidence in and respect for the legal profession.” (*In re Lesansky* (2001) 25 Cal.4th 11, 16.)

Under case precedent a misdemeanor DUI conviction does not involve moral turpitude per se. This applies even when an attorney has two DUI convictions. (*In re Kelley* (1990) 52 Cal.3d 487, 494 [two DUI convictions with violation of probation does not involve moral turpitude].) Nevertheless, an attorney may still be subject to licensure sanctions when “other misconduct warranting discipline” surrounds the misconduct. (*Id.* at pp. 494–495 [Supreme Court imposes discipline for misconduct not amounting to moral turpitude as exercise of its inherent power to control practice of law and to protect legal profession and public].) Although there is no evidence of moral turpitude here, the two convictions are relatively close in time and there is a violation of respondent’s criminal probation for the first offense when she committed the second. Further, respondent had high levels of blood alcohol while driving. Moreover, respondent’s misconduct occurred while she was a Deputy District Attorney. (See *Seide v. CBE* (1989) 49 Cal.3d 933, 938 [criminal activity is all the more egregious when committed by a current or former law enforcement officer.]) Therefore, respondent’s conduct warrants discipline as other misconduct because, like the attorney in *Kelley*, she violated a court ordered probation and specifically violated terms which were ordered to insure that alcohol did not begin to impact her practice of law.

Since respondent’s criminal conviction does not involve moral turpitude, Standard 2.16(b) is applicable. Standard 2.16(b) provides: “Suspension or reproof is the presumed sanction for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline.” In aggravation, respondent significantly harmed the administration of justice. In mitigation, respondent has no prior record of discipline, and is entitled to mitigation for entering into a pretrial stipulation and for her recognition of wrongdoing and timely atonement.

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).)

Case law is instructive. *In re Kelley, supra*, 52 Cal.3d 487, involved an attorney, with no prior record of discipline, who had two DUI misdemeanor convictions just a few years apart. Neither incident involved injury or property damage, but the second DUI occurred while Kelley was on probation for her first DUI. Kelley failed to acknowledge her alcohol abuse problem and made no showing of rehabilitative efforts. The Supreme Court found that Kelley did not commit acts of moral turpitude, but her lack of respect for the legal system and her apparent alcohol dependency problem warranted a public reproof with conditions, including three years' probation and referral to the State Bar's alcohol abuse program.

Here, respondent's underlying misconduct is similar to that in *Kelley*. Respondent was convicted of two separate offenses with high blood alcohol levels. Similarly, she was still on probation for her first offense at the time of her second offense. Unlike Kelley, respondent was an Deputy District Attorney at the time of both offenses. However, also unlike Kelley, respondent has shown substantial remorse and recognition of wrongdoing and has made significant efforts to maintain her sobriety, uphold the law, contribute to her community and profession and rebuild her life. Accordingly a public reproof with substance abuse conditions is an appropriate sanction that serves the primary purposes of discipline, including the protection of the public and the integrity of the legal profession, the maintenance of high professional standards and the preservation of public confidence in the profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of August 15, 2018, the discipline costs in this matter are \$2,629.00. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE").

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

(Do not write above this line.)

In the Matter of:
OANH KIM TRAN

Case Number(s):
18-C-12747-MC

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.

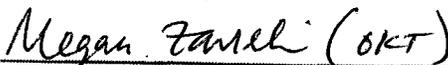
11/16/18
Date



Respondent's Signature

Oanh Kim Tran
Print Name

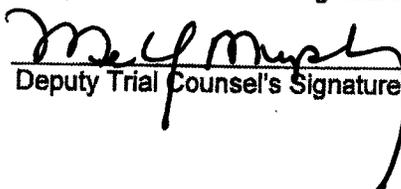
11/16/18
Date



Respondent's Counsel Signature

Megan E. Zavieh
Print Name

11/19/18
Date



Deputy Trial Counsel's Signature

Melisa G. Murphy
Print Name

(Do not write above this line.)

In the Matter of: OANH KIM TRAN	Case Number(s): 18-C-12747-MC
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REPROVAL ORDER

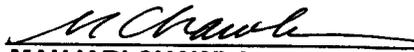
Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reprovial, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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 Rules Proc. of State Bar, rule 5.58(E) & (F).) **Otherwise the stipulation shall be effective 15 days after service of this order.**

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

12/7/18
Date


MANJARI CHAWLA
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 San Francisco, on December 7, 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 San Francisco, California, addressed as follows:
- MEGAN E. ZAVIEH
12460 CRABAPPLE RD STE 202-272
ALPHARETTA, GA 30004
- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- by overnight mail at , California, addressed as follows:
- by fax transmission, at fax number . No error was reported by the fax machine that I used.
- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Melissa G. Murphy, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 7, 2018.


George Hue
Court Specialist
State Bar Court