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

<p>Counsel For The State Bar</p> <p>Wonder J. Liang Deputy Trial Counsel 180 Howard Street San Francisco, California 94105 (415) 538-2372</p> <p>Bar # 184357</p>	<p>Case Number (s)</p> <p>05-O-2161-PEM [08-O-11442]</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED <i>[Signature]</i> MAY 18 2009 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Juan M. Falcon 252 N. Fulton Street Fresno, California 93701 (559) 499-2626</p> <p>Bar # 177400</p>	<p>Submitted to: Program Judge</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of:</p> <p>JUAN M. FALCON</p> <p>Bar # 177400</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 July 3, 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."

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (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 [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
 - (a) State Bar Court case # of prior case Supreme Court case no. S115567 [00-O-15281]
 - (b) Date prior discipline effective August 20, 2003
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rule of Professional Conduct rules 3-110(A), 3-700(D)(2), 4-100(B)(3) and Business and Professions Code section 6068(m).
 - (d) Degree of prior discipline One year stayed suspension, 3 years of probation including 60 days actual suspension.
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below:
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct. Respondent's misconduct was surrounded by and followed by dishonesty and concealment.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property. Trust funds were involved and respondent did not provide a proper account to Zuliana Gutierrez.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. Respondent's misconduct significantly harmed Elizabeth Garcia and the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. Respondent's current misconduct evidences multiple acts of wrongdoing.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **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:

See page 9.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JUAN M. FALCON
CASE NUMBER(S): ET AL. 05-O-2161-PEM [08-O-11442]

FACTS AND CONCLUSIONS OF LAW.

Case No. 05-O-2161

Facts: Count One: Case No. 05-O-2161:

1. On or about July 21, 2003, the State Bar Court entered an Order, based upon a stipulation, in case no. 00-O-15281. As part of the order, the State Bar Court ordered that respondent be placed on three years probation with conditions. The conditions included sixty days of actual suspension and that he "must comply with the provisions of the State Bar Act and Rules of Professional Conduct."
2. The suspension order was effective commencing August 20, 2003. On or about July 21, 2003, Clerk Loretta Cramer properly served a copy of this order on the respondent at the address maintained by the State Bar pursuant to Business and Professions Code, section 6002.1, which was 2014 Tulare Street #212, Fresno, California 93721.
3. Respondent was placed on inactive status on August 20, 2003, and was on inactive status continuously from August 20, 2003 through October 18, 2003.
4. On or about August 22, 2003, Elizabeth Garcia (hereinafter, "Garcia") hired respondent to represent her in the pursuit of a sexual harassment claim. Garcia claimed one of her co-workers sexually harassed her. Garcia met with respondent's paralegal or office assistant, "Joe". Joe provided Garcia with an attorney-client fee agreement, which she executed, and advised her that respondent would be her attorney. Respondent executed the fee agreement on or about August 28, 2003. At no time did Joe advise Garcia of respondent's suspension.
5. Respondent represented Garcia in her case from on or about August, 22, 2003 to on or about October, 2004.
6. At no time did respondent advise Garcia of his suspension.

Conclusions of Law: Count One: Case No. 05-O-2161:

By representing to Garcia, on or between August 22, 2003, through October 18, 2003, that he was entitled to practice law, and by executing the fee agreement for legal services on or about August 28, 2003, when he was not an active member of the State Bar respondent held himself out as entitled to practice law, and practiced law, respondent willfully violation of Business and Professions Code, sections 6125 and 6126, and thereby failed to support the laws of the State of California, in willful violation of Business and Professions Code, section 6068(a).

Facts: Count Three: Case No. 05-O-2161:

7. The facts in Count One are hereby incorporated by reference
8. On or about August or September, 2003, Joe, on behalf of respondent, advised Garcia to get a right to sue letter from EEOC. On or about October 1 2003, Garcia received a right to sue letter from the Department of Fair Employment and Housing (DFEH).
9. Respondent did not return to active status until October 18, 2003.
10. On or about October 22, 2003, respondent wrote to opposing counsel in the matter and advised opposing counsel he was representing Garcia.
11. On or about November, 2003, respondent advised Garcia that as a courtesy, he was putting the case on hold while the defendant, Dr. Bhatia, traveled to India for a month.
12. On or About January, 2004, Garcia again contacted respondent and requested a status of the case. Respondent advised Garcia that he would contact the defendant's counsel, Ms. Balderama, and get back to Garcia. Respondent did not get back to Garcia.
13. On or about March, 2004, Garcia again contacted respondent and requested a status of her case. Respondent advised he would contact Garcia with an update. He failed to do so.
14. On or about April, 2004, Garcia again contacted respondent. At this time, respondent's assistant, "Joe" asked Garcia to provide him with a settlement position. The parties met and conferred in April, 2004 and were unable to reach a settlement.
15. After the settlement meeting, respondent advised Garcia that he thought her settlement posture was too high, and that if she did not change her position, it was not feasible for him to continue to represent her. Respondent advised Garcia that he would file suit to protect Garcia's right to sue.
16. Several weeks after the settlement conference, in or about May, 2004, Garcia called respondent to consult regarding her case. She left several telephone messages.
17. Respondent received the messages and failed to return the call.
18. On or about August, 2004, Garcia spoke to respondent. Respondent stated he would make a \$10,000 settlement demand on her behalf.
19. Thereafter, Garcia did not hear from respondent.
20. Garcia called respondent again on August 31, 2004, requesting the status of her case. She was advised that respondent would call her back. He failed to do so.
21. In or about October, 2004, Garcia consulted with another counsel regarding taking over her case.

22. In or about late October, 2004, Garcia requested the return of her file from respondent.

23. The statute of limitations in Garcia's case expired on October 1, 2004.

24. Respondent did not file suit within the statute of limitations.

Conclusions of Law: Count Three: Case No. 05-O-2161:

By failing to file suit within the statutory time frame in Garcia's case, respondent failed to perform, in willful violation of the Rules of Professional Conduct, rule 3-110(A).

Facts: Count Five: Case No. 05-O-2161:

25. The facts in Counts One and Three are hereby incorporated by reference.

26. On or about July 15, 2004, respondent mailed a letter to Garcia indicating that he would not be able to represent her in her case.

27. Garcia states she never received this letter.

28. Thereafter, in August, 2004, respondent agreed to make another settlement. Respondent did not return Garcia's file to her until October 20, 2004, after the statute of limitations ran

29. After respondent spoke to Garcia in August, 2004, he did not communicate further with her (other than the cover letter returning her file on October 20, 2004).

Conclusions of Law: Count Five: Case No. 05-O-2161:

By failing to apprise Garcia of the status of her case after August, 2004, and by failing to advise Garcia of the October 1, 2004 statute of limitations in a timely fashion, respondent failed to keep a client reasonably informed in a matter in which he agreed to perform legal services, in willful violation of Business and Professions Code, section 6068(m).

Case No. 08-O-11442

Facts: Count One: Case No. 08-O-11442

1. In or about March 2007, Respondent represented Armando Gutierrez (hereinafter, "Gutierrez") in several legal matters, including two criminal cases, *People v. Armando Gutierrez*, Fresno County Superior Court Case Numbers M06920578 and M07916489, and a family law matter, *Juana Perez v. Armando Gutierrez*, Fresno County Superior Court Case Number 06CEFL03014.

2. On or about March 15, 2007, Gutierrez and Juana Perez executed a stipulated judgment for the dissolution of their marriage. Pursuant to the stipulation, Respondent received \$48,598 on behalf of Gutierrez. This sum represented the equalizing payment to Gutierrez for the equal distribution of the parties' community property assets and debts.

3. On or about March 19, 2007, Respondent retained \$6,000 of the \$48,598 for himself as attorneys fees. This distribution was approved by his client, Gutierrez. Respondent placed the remaining funds, \$42,598 into a segregated, individual client trust account, entitled Juan Falcon & Associates, Inc, Attorney/Client Trust Account, Marriage of Gutierrez, account number 104005731 at Premier Bank (hereinafter, "Gutierrez Trust Account."). The only funds that Respondent maintained in this account were funds on behalf of Gutierrez.
4. On or about March 26, 2007, Gutierrez passed away.
5. On or about May 22, 2007, Respondent withdrew \$5,000 cash from the Gutierrez Trust Account. Respondent withdrew the funds for his own personal use, and not for any purpose on behalf of Gutierrez.

Conclusions of Law: Count One: Case No. 08-O-11442:

By failing to maintain the full \$42,598.00 in funds in trust on behalf of Gutierrez and/or Gutierrez' rightful heirs, and by taking \$5,000 for his own use and purposes, Respondent failed to maintain client funds in trust, in willful violation of Rules of Professional Conduct, rule 4-100(A).

Facts: Count Two: Case no. 08-O-11442:

6. The facts in Count One are hereby incorporated by reference.
7. In March 2007, Zuliana Gutierrez, daughter of Armando Gutierrez, requested some of the funds from Respondent, in order to pay her father's funeral expenses. Respondent advised Zuliana Gutierrez to obtain the assistance of a probate attorney.
8. On or about November 16, 2007, attorney Patricia Carrillo (hereinafter, "Carrillo"), filed a Petition to Determine Succession to Real Property in the Matter of Armando Gutierrez Perez, aka, Armando Perez, Case Number 07 CE PR 01186, filed in Superior Court, County of Fresno, on behalf of Juana Perez, Gutierrez' ex-wife.
9. The Court did not approve the petition, but requested that Carrillo instead pursue a transfer pursuant to Probate Code § 13100.
10. On or about February 13, 2008, Carrillo provided Respondent with an "Affidavit for Collection of Personal Property Under California Probate Code Section 13100-13106". The Affidavit was signed by Dizela Perez, Zuliana Gutierrez, Armando Gutierrez Jr. and Juana Perez for Giorgiana Gutierrez, a minor. Each signature was notarized. On behalf of the heirs, Carrillo requested that Respondent disburse the funds to her.
11. On or about March 13, 2008, Respondent provided four cashier's checks to Carrillo, each in the sum of \$10,649.50, one made out to each of the heirs: Dizela Perez, Zuliana Gutierrez, Armando Gutierrez Jr. and Giorgiana Gutierrez, c/o Client Trust Account of Patricia Carrillo. The total of these sums is \$42,598.00, the *principal* amount that Respondent should have maintained in the Gutierrez Trust Account.

12. In making his payment to the heirs, Respondent replaced the \$5,000 in funds that he had removed on May 31, 2007.
13. Respondent did not disburse to the heirs, the interest earned on the Gutierrez Trust Account. Interest on the account accrued at the rate of 1.04 percent. Respondent's statement for the Gutierrez Trust Account for July 31, 2007, indicated \$1,093.59 in interest paid on the account, on the principal sum of \$37,897.40, payable at the rate of 1.04 percent. Respondent's statement for the Gutierrez Trust Account for March 8, 2008 indicated \$71.51 in interest paid for 2008.
14. Respondent misappropriated the \$5,000 he withdrew from the Gutierrez Trust Account on or about May 22, 2007. He returned this principal amount to the Gutierrez heirs when he disbursed funds to them in March 2008.
15. Respondent misappropriated all of the interest earned on the Gutierrez Trust Account. This sum was at least an additional \$1,065.10 (\$1093.59 plus \$71.51). ~~Respondent did not return this amount to the Gutierrez heirs at any time.~~ *S.F. J.R.*
16. Respondent also misappropriated the value of the interest that would have accrued on the \$5,000, had the \$5,000 been properly maintained in the Gutierrez Trust Account.

Conclusions of Law: Count Two: 08-O-11442:

By misappropriating \$5,000 from the account in May 2007; by misappropriating the interest that accrued on the account; and by misappropriating the value to the account of the interest that would have accrued on the \$5,000 that Respondent withdrew from the account, Respondent committed acts of moral turpitude, in willful violation of Business & Professions Code § 6106.

Facts: Conclusions of Law: Count Three: 08-O-11442:

17. The facts in Counts One and Two are hereby incorporated by reference.
18. On or about February 13, 2008, Carrillo also requested a full accounting of all funds Respondent held on behalf of Gutierrez. She stated, "To date we still have not received the bank statements which indicated the date of withdrawal (sic) and the current account balance for the trust account."
19. On or about March 18, 2008, Carrillo wrote to Respondent and again requested bank statements from the client trust account depicting the date of withdrawal (not deposit) of the subject amount.
20. On or about March 20, 2008, Respondent sent Carrillo a letter, stating, "Mr. Gutierrez died on March 26, 2007, so there was no disbursements to me after his death." (Emphasis added).
21. In fact, Respondent disbursed \$5,000 to himself on or about May 22, 2007.
22. In his March 20, 2007 letter to Carrillo, Respondent enclosed a redacted bank statement for the Gutierrez Trust Account, for the date 3/30/07, indicating a deposit (not withdrawal) of \$42,598.00 in the account (the full amount of \$48,598.00 minus Respondent's \$6,000 in attorney's fees). Respondent redacted the amount of interest indicated on the statement.

23. On or about March 25, 2008, Respondent again sent Carrillo a letter with an enclosed, redacted copy of the Gutierrez Trust Account statement for March 30, 2007. Again, Respondent redacted the amount of interest on the statement.
24. Respondent did not provide Carrillo with any additional trust account records or documents. He did not advise Carrillo that he had taken \$5,000 from the account in May 2007. He did not advise Carrillo of the interest earned on the account.
25. Respondent did not provide Carrillo with the most recent statement, indicating the disbursements.
26. In fact, the March 2008 statement of the Gutierrez Trust Account indicated a beginning balance of \$38,058.02, indicating that at least \$4,539.98 had been removed from the account. (This supports the \$5,000 removed on May 22, 2008, and the intervening accumulation of \$460.02 in interest).

Conclusions of Law: Count Three: Case No. 08-O-11442

By falsely telling Carrillo that there were no disbursements to Respondent after Gutierrez' death, when in fact Respondent disbursed \$5,000 to himself on or about May 22, 2007; and by failing to provide Carrillo with bank statements tracing the disbursement (not deposit) of the total \$42,598.00; and by redacting the information on interest earned on the account from the statements Respondent provided to Carrillo, Respondent concealed his misappropriation and misrepresented his use of the Gutierrez Trust Account to Carrillo, and thereby committed acts of moral turpitude, in willful violation of Business & Professions Code § 6106.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was February 24, 2009.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
05-O-2161	TWO	§6068(k)
	FOUR	Rule 3-700

ADDITIONAL MITIGATING CIRCUMSTANCES.

Participation in Lawyer's Assistance Program. By December 17, 2008, respondent had contacted the State Bar Lawyer's Assistance Program ("LAP") and completed the intake process. Respondent signed an evaluation agreement with LAP whereby he was assessed and monitored for a period of time.

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

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In the Matter of JUAN M. FALCON, SBN 177400	Case number(s): 05-O-2161-PEM [08-O-11442]
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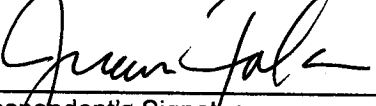

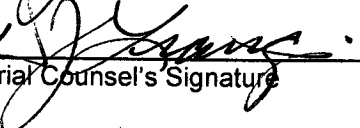
SIGNATURE OF THE PARTIES

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.

Date <u>5/11/09</u>	 Respondent's Signature	Juan M. Falcon Print Name
Date 5/15/09	 Respondent's Counsel Signature	N/A Print Name
Date <u>5/15/09</u>	 Deputy Trial Counsel's Signature	Wonder J. Liang Print Name

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In the Matter Of JUAN M. FALCON, SBN 177400	Case Number(s): 05-O-2161-PEM [08-O-11442]
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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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(a), Rules of Procedure.)

Date

May 18, 2009

Pat McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 18, 2009, I served a true copy of the following document(s):

**CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS
AND ORDERS (Rules Proc. of State Bar, rule 803 (a))**

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

**CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR
COURT'S ALTERNATIVE DISCIPLINE PROGRAM**

[X] by personally delivering such documents to the following individuals at 180 Howard Street, 6th Floor, San Francisco, California 94105-1639:

**JUAN M. FALCON, ESQ.
WONDER LIANG, ESQ.**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **May 18, 2009**



George Hue
Case Administrator
State Bar Court