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**State Bar Court of California
Hearing Department**

PUBLIC MATTER

Counsel For The State Bar Robert A. Henderson Deputy Trial Counsel 180 Howard St., 7th Floor San Francisco, CA 94105 Telephone: (415) 538-2000 Bar # 173205	Case Number (s) 06-O-14064	(for Court's use)   FILED JAN 18 2007 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
James J. Banks Banks & Watson Hall of Justice Building 813 Sixth Street, Suite 400 Sacramento, CA 95814-2403 Telephone: (916) 325-1000 Bar # 119525	Submitted to: Settlement Judge	
In the Matter Of: Jacques S. Whitfield Bar # 147362 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 11, 1990**.
- (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 **11** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

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- (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 284, Rules of Procedure.
 - costs to be paid in equal amounts prior to February 1 for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived

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

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case **97-O-11176**
 - (b) Date prior discipline effective **August 1, 2002**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **3-110(A); 3-700(D)(2); 4-100(B)(4); 6068(m)**
 - (d) Degree of prior discipline **three-years stayed suspension; five-years probation; restitution and other probation conditions**
 - (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.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Actual Suspension

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(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

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **one-year**.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) 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-years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 953, Calif. Rules of Ct.)

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of **60-days**.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), 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:

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 learning and ability in general law, pursuant to standard 1.4(c)(ii), 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:

- (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:
 - Substance Abuse Conditions
 - Law Office Management Conditions
 - Medical Conditions
 - 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 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

No MPRE recommended. Reason:

- (2) **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, 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.

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- (3) **Conditional Rule 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, 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:
- (5) **Other Conditions:**

Attachment language begins here (if any):

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Jacques S. Whitfield

CASE NUMBER(S): 06-O-14064

FACTS.

On December 12, 2001, respondent and the State Bar entered into a stipulation in State Bar Case number 97-O-11176. As part of the stipulation, respondent agreed to be placed on probation for five years and to comply with various conditions of probation. On February 20, 2002, the Hearing Department of the State Bar Court approved the stipulation. On July 2, 2002, the Supreme Court issued disciplinary Order S106145 approving the above-mentioned stipulation, with an effective date of August 1, 2002.

One of the conditions of probation required respondent to submit quarterly reports as follows:

“Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall 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. If the first report would cover less than 30 days, that report shall 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.”

(b). Respondent filed three quarterly reports late as follows:

DATE REPORT DUE	DATE FILED
October 10, 2002	October 15, 2002
January 10, 2004	January 28, 2004
April 10, 2005	April 11, 2005

Another one of the conditions of probation required respondent to pay restitution as follows:

“Within four (4) years from the effective date of the imposition of discipline in this matter, Respondent must make restitution as follows:

“Case No. 97-O-11176 (Cowger): To Ronald Cowger or the Client Security Fund if it has paid, in the principal amount of \$2,500.00 plus interest at the rate of 10% per annum from March 1, 1997, in four (4) equal yearly installments beginning in the calendar year 2002 until paid in full, and furnish satisfactory evidence of such restitution to the Probation Unit. Respondent shall include in each quarterly report required herein satisfactory evidence of all restitution payments made by him during that reporting period.

“Case No. 98-O-03467 (Dodge): To Raymond Dodge or the Client Security Fund if it has paid, in the principal amount of \$500.00 plus interest at the rate of 10% per annum from July 1, 1998, in four (4) equal yearly installments beginning in the calendar year 2002 until paid in full, and furnish satisfactory evidence of such restitution to the Probation Unit. Respondent shall include in each quarterly report required herein satisfactory evidence of all restitution payments made by him during that reporting period.

“Case No. 99-O-11956 (Guyton): To Ronald Guyton or the Client Security Fund if it has paid, in the principal amount of \$3,500.00 plus interest at the rate of 10% per annum from June 1, 1998, in four (4) equal yearly installments beginning in the calendar year 2002 until paid in full, and furnish satisfactory evidence of such restitution to the Probation Unit. Respondent shall include in each quarterly report required herein satisfactory evidence of all restitution payments made by him during that reporting period.

“Case No. 00-O-12613 (Blackwell): To Charles Blackwell or the Client Security Fund if it has paid, in the principal amount of \$2,100.00 plus interest at the rate of 10% per annum from June 1, 1998, in four (4) equal yearly installments beginning in the calendar year 2002 until paid in full, and furnish satisfactory evidence of such restitution to the Probation Unit. Respondent shall include in each quarterly report required herein satisfactory evidence of all restitution payments made by him during that reporting period.”

(b) Respondent failed to pay restitution as follows:

RESTITUTION DUE DATE AND AMOUNT	RESTITUTION PAID DATE
August 1, 2003 <u>Case No. 97-O-11176 (Cowger)</u> \$625 <u>Case No. 98-O-03467 (Dodge)</u> \$125 <u>Case No. 99-O-11956 (Guyton)</u> \$875 <u>Case No. 00-O-12613 (Blackwell)</u> \$525	None
August 1, 2004 <u>Case No. 97-O-11176 (Cowger)</u> \$625 <u>Case No. 98-O-03467 (Dodge)</u> \$125 <u>Case No. 99-O-11956 (Guyton)</u> \$875 <u>Case No. 00-O-12613 (Blackwell)</u> \$525	None
August 1, 2005 <u>Case No. 97-O-11176 (Cowger)</u> \$625 <u>Case No. 98-O-03467 (Dodge)</u> \$125 <u>Case No. 99-O-11956 (Guyton)</u> \$875 <u>Case No. 00-O-12613 (Blackwell)</u> \$525	None

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RESTITUTION DUE DATE AND AMOUNT	RESTITUTION PAID DATE
August 1, 2006 Case No. 97-O-11176 (Cowger) \$625 Case No. 98-O-03467 (Dodge) \$125 Case No. 99-O-11956 (Guyton) \$875 Case No. 00-O-12613 (Blackwell) \$525	None

Between September 26, 2006 and November 30, 2006, respondent paid restitution and interest to Cowger, Blackwell, Guyton and Dodge. Respondent also reimbursed the Client Security Fund for the money paid to Blackwell.

CONCLUSIONS OF LAW.

Respondent failed to comply with the conditions attached to his disciplinary probation when he failed to: (1) timely file his quarterly reports; and (2) pay restitution and provide satisfactory evidence to the Probation Unit of payment, as required, thereby violating Business and Professions Code section 6068(k).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was December 20, 2006.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 20, 2006, the estimated prosecution costs in this matter are approximately \$1,983. Respondent acknowledges that this figure is an estimate only. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.7(a) provides that if a member is found culpable of professional misconduct in any proceeding which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior proceeding was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

In the Matter of Gorman (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567

Gorman failed to timely pay restitution and interest on a stipulated judgment. The restitution was for \$620 the interest grew to \$330. Gorman eventually paid full restitution, including interest, but only after the State Bar became involved. Gorman received 30-days actual suspension from the practice of law.

In the Matter of Taggart (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302

Taggart failed to pay restitution of \$1,528 plus interest. Taggart had two prior suspensions and received a six-month actual suspension from the practice of law.

In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81

Hunter violated one of the quarterly-reporting conditions of his probation. He also failed to pay \$1,166.50 of required restitution from a total of \$1,766.50. Hunter received one-year actual suspension from the practice of law.

STATE BAR ETHICS SCHOOL.

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

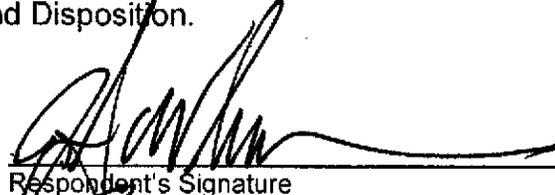
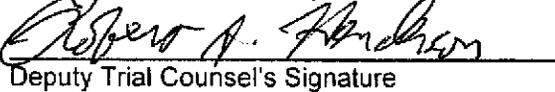
Respondent admits that the above facts are true and that he is culpable of violations of the specified statute.

(Do not write above this line.)

In the Matter of Jacques S. Whitfield	Case number(s): 06-O-14064
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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 Fact, Conclusions of Law and Disposition.

<u>1/9/07</u> Date		<u>Jacques S. Whitfield</u> Print Name
<u>1/9/07</u> Date		<u>James J. Banks</u> Print Name
<u>1/10/07</u> Date		<u>Robert A. Henderson</u> Print Name

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

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In the Matter Of Jacques S. Whitfield	Case Number(s): 06-O-14064
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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 stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), 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 953(a), California Rules of Court.)**

Jan 17, 2007
Date

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 of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on January 18, 2007, 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:

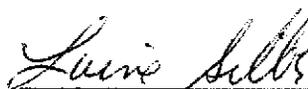
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**JAMES JOSEPH BANKS
BANKS & WATSON
813 6TH ST #400
SACRAMENTO, CA 95814 - 2403**

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

ROBERT HENDERSON, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **January 18, 2007**.



Laine Silber
Case Administrator
State Bar Court