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

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Counsel For The State Bar

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In the Matter Of:
Francis T. Sarguis

Bar # 173100

A Member of the State Bar of California
(Respondent)

Case Number (s)
08-O-11572

(for Court's use)

FILED *KS*

FEB 01 2010

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

PUBLIC MATTER

Submitted to: **Program Judge**

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

☐ 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 December 8, 1994.
- (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 8 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

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

B. Aggravating Circumstances [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
 - (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) ☐ **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.
- (8) ☒ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

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- (1) ☒ **No Prior Discipline:** Respondent has no prior record of discipline ~~for many years of practice~~ ly FTS
- (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:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Francis T. Sargius

CASE NUMBER(S): 08-O-11572 ET AL.

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

The parties waive any variance between the Notice of Disciplinary Charges filed on, March 20, 2009 and the statement of facts and conclusions of law contained in this stipulation of facts.

FACTS AND CONCLUSIONS OF LAW.

Statement of Facts: Count One (Case No. 08-O-11572)

1. Francis T. Sarguis ("respondent") was admitted to the practice of law in the State of California on December 8, 1994, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

2. Respondent wilfully violated Rules of Professional Conduct, rule 3-310(F), by accepting compensation for representing a client from one other than the client without complying with the requirement(s) that [1] there was no interference with respondent's independence of professional judgment or with the client-lawyer relationship; and [2] information relating to representation of the client was protected as required by Business & Professions Code § 6068(e); and [3] respondent obtained the client's informed written consent, as follows:

3. In 2006 and continuing thereafter for all times relevant to this stipulation, respondent was retained by Omneon Inc, ("Omneon") to handle various immigration matters on behalf of its employees.

4. Omneon agreed to pay respondent a maximum of \$7,500 for the matters, thereafter, the individual employees would have to pay any outstanding sums.

5. Respondent never executed a fee agreement with Omneon, nor did he execute any fee agreements with the employees.

6. At no time, did respondent ever obtain written consent from any of the employees to accept fees from someone other than themselves.

7. At no time, did respondent advise the employees that although Omneon was paying the attorney's fees, that there would be no interference with respondent's independence of professional judgment or with the attorney-client relationship.

8. At no time, did respondent ever advise the employees, that he would not disclose any information protected by Business & Professions Code § 6068(e) to Omneon.

9. On January 13, 2006, respondent submitted to Omneon invoice number 1452, requesting payment of \$1,850.00 for professional services he rendered to Haruna Takahashi. Omneon paid respondent the requested sum in May 2006.

10. On April 15, 2006, respondent submitted to Omneon invoice number 1521, requesting payment of \$3,060.00 for professional services he rendered to Haruna Takahashi. Omneon paid respondent the requested sum in May 2006.

11. On May 27, 2006, respondent submitted to Omneon invoice number 1566, requesting payment of \$5,615.00 for professional services he rendered to Simon Eldridge. Omneon paid respondent the requested sum in May 2006.

12. On September 30, 2006, respondent submitted to Omneon invoice number 1637, requesting payment of \$4,575.00 for professional services he rendered to Apurba Dutta. Omneon paid respondent the requested sum in June 2007.

13. On December 20, 2006, respondent submitted to Omneon invoice number 1705, requesting payment of \$4,155.00 for professional services he rendered to Rutal Dave. Omneon paid respondent the requested sum in January 2007.

14. On April 5, 2007, respondent submitted to Omneon invoice number 1759, requesting payment of \$4,155.00 for professional services he rendered to Ashok Mariappan. Omneon paid respondent the requested sum in June 2007.

15. On May 29, 2007, respondent submitted to Omenon invoice number 1789, requesting payment of \$2,050.00 for professional services he rendered to Apurba Dutta. Omneon paid respondent the requested sum in June 2007.

16. On May 31, 2007, respondent submitted to Omenon invoice number 1796, requesting payment of \$3,800.00 for professional services he rendered to Simon Eldridge. Omneon paid respondent the requested sum in June 2007.

17. On May 31, 2007, respondent submitted to Omenon invoice number 1795, requesting payment of \$2,750.00 for professional services he rendered to Fernando Gonzalez. Omneon paid respondent the requested sum in June 2007.

Conclusions of Law: Count One (Case No. 08-O-11572)

18. By accepting payment for professional services he rendered to Haruna Takahashi, Simon Eldridge, Apurba Dutta, Rutal Dave, Ashok Mariappan, and Fernando Gonzalez from Omneon, failing to insure that the attorney-client relationship would not be interfered upon and failing to obtain written consent, from to Haruna Takahashi, Simon Eldridge, Apurba Dutta, Rutal Dave, Ashok Mariappan, and Fernando Gonzalez, to accept fees from Omneon, respondent willfully violated Rule 3-310(F) of the Rules of Professional Conduct.

Statement of Facts: Count Two (Case No. 08-O-11572)

19. Respondent wilfully violated Business & Professions Code § 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against respondent, as follows:

20. On March 20, 2008, the State Bar opened an investigation, case no. 08-O-11572, concerning respondent's representation of Omneon's employees.

21. On September 29, 2008, State Bar investigator Amanda Gormley wrote to respondent regarding the *Omneon* matter. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

22. The September 29, 2008, letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the *Omneon* matter. Respondent did not respond to the letter or otherwise communicate with the investigator.

23. On October 18, 2008, State Bar investigator Amanda Gormley wrote to respondent regarding the *Omneon* matter, as she had not received a response to her first letter of September 29, 2008. The letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

24. The October 18, 2008, letter enclosed a copy of the September 29, 2008 letter, advised the respondent of his obligation to cooperate in a State Bar investigation and requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the *Omneon* matter. Respondent did not respond to the letter or otherwise communicate with the investigator.

Conclusions of Law: Count Two (Case No. 08-O-11572)

25. By not providing a written response to the allegations in the *Omneon* matter or otherwise cooperating in the investigation of the *Omneon* matter, respondent failed to cooperate in a disciplinary investigation, a wilfull violation of Business & Professions Code § 6068(i).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(6), was July 14, 2009.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 13, 2009, the prosecution costs in this matter are \$2,296.00. 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.

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.

(Do not write above this line.)

In the Matter of
Francis T. Sarguis

Case number(s):
08-O-11572

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.

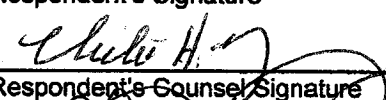
If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar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

8/24/09
Date


Respondent's Signature

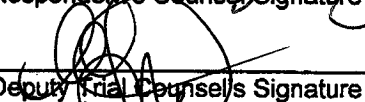
Francis T. Sarguis
Print Name

8/26/09
Date


Respondent's Counsel Signature

Vicki H. Young
Print Name

9/18/09
Date


Deputy Trial Counsel's Signature

Maria J. Oropeza
Print Name

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In the Matter Of Francis T. Sarguis	Case Number(s): 08-O-11572
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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.)

Feb. 1, 2010
Date

Lucy M. Armendariz
Judge of the State Bar Court
Lucy Armendariz

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 February 1, 2010, 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 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:

FRANCIS T. SARGUIS
180 HOWARD ST., 6TH FLR.
SAN FRANCISCO, CA 94105

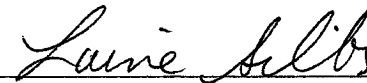
VICKI H. YOUNG
180 HOWARD ST., 6TH FLR.
SAN FRANCISCO, CA 94105



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

MARIA OROPEZA, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 1, 2010.



Laine Silber
Case Administrator
State Bar Court