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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
<p>Counsel For The State Bar</p> <p>Jean Cha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1000</p> <p>Bar # 228137</p>	<p>Case Number(s): 08-O-12594; 08-O-12752; 08-O-14022; 09-O-11936; 09-O-12070; 10-N-09199</p> <p style="text-align: center;">PUBLIC MATTER</p>	<p>For Court use only</p> <p style="text-align: center;">FILED MAY - 5 2011</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>David A. Clare Attorney at Law 444 W Ocean Blvd, Ste 800 Long Beach, CA 90802 (562) 624-2837</p> <p>Bar # 44971</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: Eugene Wellington Matthews</p> <p>Bar # 161396</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 DECEMBER 9, 1992.
- (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 21 pages, not including the order.



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- (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".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: FOUR BILLING CYCLES FOLLOWING THE EFFECTIVE DATE OF THE SUPREME COURT ORDER. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [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 06-O-12503; 07-O-10029; 07-O-10315; 07-O-11254; 07-O-12811; 07-O-13169; 08-O-10686; 08-O-11215 - S 181713
 - (b) Date prior discipline effective 6/25/2010
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct Rules 3-110(A), 3-700(A)(2), 3-700(D)(2), 4-100(A), 1-320(A), Business and Professions Code sections 6068(m), & 6068(i).
 - (d) Degree of prior discipline Two Years Stayed Suspension, Four Years Probation, with 120 Days Actual Suspension and Restitution.
 - (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:

N/A

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. Respondent has agreed to discipline without requiring a hearing.
- (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. Respondent suffered from depression which adversely impacted his practice from 2004 through 2007. This condition adversely impacted his ability to competently represent Galban, Garcia, and Ho. Respondent's depression resulted in his heavy reliance on an inadequately small office staff. Thus, causing the management of his practice to become substantially impaired. (Std. 1.2(e)(iv).) Unfortunately, Julio Calvo, his paralegal, stole money from his office and client trust account from August 1, 2005 through November 30, 2007.

Julio Calvo made a credit charge in the Seifert matter unbeknownst to Respondent. This betrayal was shocking and disturbing to Respondent. After discovering the theft, Respondent reported Calvo's acts to the police and Calvo was subsequently prosecuted and convicted for felony grand theft and forgery. These emotional difficulties are recognized factors in mitigation. (In the Matter of Johnson (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233; In the Matter of Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389.) Respondent's depression is under control with the assistance of a therapist who meets with Respondent weekly. (Std. 1.2(e)(viii).)

- (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. Respondent suffered from the intervening criminal acts of his long-time trusted employee, Calvo, who tampered with and created confusion related to pending disbursements in Respondent's client trust account. Near the end of Calvo's employment, Calvo likely converted the Seifert disbursement checks to his own use. The violation related to Respondent's trust account did not arise from corruption or venality on Respondent's part, but rather from the intervening criminal act of a staff person. (Cf. Lawhorn v. State Bar (1987) 43 Cal.3d 1357, 1368.) Respondent has not been able to make restitution due to financial hardship but has agreed to make restitution as part of these proceedings.
- (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 THREE YEARS.
- 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 FOUR YEARS, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

- (3) **Actual Suspension:**
- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of EIGHTEEN (18) MONTHS.
- 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 the 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:
- | | |
|--|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input checked="" type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

Attachment language (if any):

**ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF: Eugene Wellington Matthews, 161396
CASE NUMBERS: 08-O-12594; 08-O-12752; 08-O-14022;
09-O-11936; 09-O-12070; 10-N-09199

Respondent EUGENE WELLINGTON MATTHEWS, admits the facts set forth in the stipulation are true and that he is culpable of violations of the specified statutes and Rules of Professional Conduct.

(1) Case No. 08-O-12594 – THE ARREAGA MATTER

FACTS

1. On July 8, 2008, the State Bar opened an investigation, case no. 08-O-12594, pursuant to a complaint made against Respondent regarding Jose Arreaga (the “Arreaga matter”).

2. On August 1, 2008, and August 18, 2008, a State Bar investigator mailed letters to Respondent at his address of record regarding the Arreaga matter requesting that Respondent respond in writing to specific allegations of misconduct being investigated by the State Bar. Respondent received the letters but did not provide a response.

CONCLUSION OF LAW

3. By not providing a written response to the allegations in the Arreaga matter or otherwise cooperating in the investigation of the Arreaga matter, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in wilful violation of Business and Professions Code section 6068(i).

(2) Case No. 08-O-12752 – THE GALBAN MATTER

FACTS

4. On October 4, 2006, Socorro Galban (“Galban”) hired Respondent on a contingency fee basis to pursue a personal injury and property damage matter following Galban’s automobile accident with a City of South Gate employee (the “personal injury matter”). Galban had no automobile insurance at the time of the accident and was therefore not entitled to recovery of

non-economic damages such as pain and suffering; she was entitled to recover for economic damages such as medical bills, lost wages, future damages and out of pocket costs. Galban did have medical insurance which paid for her medical bills only.

5. On December 6, 2006, Respondent sent a letter to the City of South Gate confirming that he was representing Galban in the personal injury matter and requesting an update within the next week.

6. On April 16, 2007, Carl Warren & Co, the claims adjuster for the City of South Gate, sent Respondent a letter informing him that Galban's claim against the City of South Gate had been rejected. The April 16, 2007 letter stated that any civil action had to be filed within six months of the date of the April 16, 2007 letter or by October 16, 2007.

7. On June 1, 2007, Respondent sent a letter to Galban informing her that the claim for damages against South Gate had been rejected, and Respondent would be filing a lawsuit against the city within fourteen business days. Respondent did not file a lawsuit on Galban's behalf at anytime.

8. Respondent did not tell Galban that he missed the October 16, 2007 deadline to file the lawsuit against the City of South Gate.

9. On July 31, 2008, Galban sent a letter to Respondent regarding his failure to perform on her behalf. In the July 31, 2008 letter, Galban terminated Respondent's services stating that she had only received two letters from Respondent and the last time she spoke to Respondent was on December 16, 2006. Respondent received the letter but did not respond.

CONCLUSIONS OF LAW

10. By not filing a lawsuit on Galban's behalf prior to October 16, 2007 or at any time, Respondent repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct Rule 3-110(A).

(3) Case No. 08-O-14022 – THE SEIFERT MATTER

11. On April 27, 2007, Jessica Seifert (“Jessica”) and her mother, Mun, hired Respondent to handle a property damage matter resulting from a water leak into Jessica’s apartment (the “property matter”). In April 2007, Jessica paid Respondent \$2,500 in advanced legal fees for the property matter.

12. In June 2007, Respondent received an insurance draft from Intersurance Exchange of the Automobile Club (“Automobile Club”) made payable to Mun and Respondent in the amount of \$2,078.

13. On June 15, 2007, Respondent endorsed the settlement draft and deposited the \$2,078 insurance draft in his client trust account at Union Bank of California, account no. xxxxxxxx322 (“CTA”).¹

14. In August 2007, Respondent received a second insurance draft from the Automobile Club made payable to Mun and Respondent in the amount of \$477.75.

15. On August 22, 2007, Respondent endorsed the \$477.75 insurance draft and deposited it into his CTA.

16. In September 2007, Respondent received a third insurance draft from the Automobile Club made payable to Mun and Respondent in the amount of \$930.

17. On September 18, 2007, Respondent endorsed the \$930 insurance draft and deposited it into his CTA.

18. At no time did Respondent tell Mun or Jessica that he received \$3,485.75 in insurance funds on their behalf.

19. As of November 2, 2007, Respondent had not disbursed any of the \$3,485.75 in insurance funds to Mun and Jessica or to anyone on their behalf and Respondent had a negative balance in his CTA.

¹ The account number has been partially redacted due to privacy concerns.

20. On August 24, 2007, Respondent's paralegal, Julio Calvo, charged an additional \$2,500 to Jessica's credit card without her knowledge or consent. Respondent did not provide Jessica with an accounting or opportunity to dispute any charges.

21. On January 24, 2008, subsequent counsel, David K. Ng, sent Respondent a letter advising him that Jessica had retained Ng and advising Respondent that he had been discharged. In the letter, Ng asked Respondent to forward Jessica's complete file including original receipts and photographs required by the Automobile Club to make further payment to Jessica for property damage. The January 24, 2008 letter also contained a signed statement from Jessica discharging Respondent and asking that her entire file be transferred to Ng. Respondent received the January 24, 2008 letter but failed to respond and failed to turn over Jessica's file. Thereafter, Jessica learned for the first time that Respondent had already cashed Automobile Club insurance drafts without informing her.

22. On May 19, 2008, Jessica sent a letter to Respondent regarding her original file and the three insurance checks issued by the Automobile Club. In the May 19, 2008 letter, Jessica told Respondent to forward her entire client file and requested the status of the funds forwarded by Automobile Club. Respondent received the May 19, 2008 letter but failed to respond and failed to turn over Jessica's file.

23. On July 2, 2008, Jessica sent another letter to Respondent regarding his failure to turn over her client file and his failure to respond to her May 19, 2008 letter. Jessica enclosed a copy of the May 19, 2008 letter. Respondent received the July 2, 2008 letter but failed to respond and failed to turn over Jessica's file.

CONCLUSIONS OF LAW

24. By failing to competently supervise Julio Calvo and allowing him to charge Jessica's credit card \$2,500 and not informing Jessica of the charge to her credit card, Respondent was grossly negligent in wilful violation of Business and Professions Code section 6106.

25. By not notifying Jessica or Mun of the receipt of \$2,078 on their behalf, by not notifying Jessica or Mun of the receipt of \$477.75 on their behalf and by not notifying Jessica or Mun of the receipt of \$930 on their behalf, Respondent failed to notify a client promptly of the receipt of the client's funds, securities, or other properties in wilful violation of Rules of Professional Conduct Rule 4-100(B)(1).

26. By failing to maintain \$3,485.75 in insurance funds in his CTA on behalf of Mun and Jessica, Respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in wilful violation of Rules of Professional Conduct Rule 4-100(A).

27. By not promptly returning the client file to Jessica despite her requests and despite requests from Ng on Jessica's behalf, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property in wilful violation of Rules of Professional Conduct Rule 3-700(D)(1).

(4) Case No. 09-O-11936 – THE GARCIA MATTER

FACTS

28. On January 23, 2008, Gumaro Garcia ("Garcia") hired Respondent to expunge his criminal matter (the "expungement matter"). On January 23, 2008, Garcia paid Respondent \$500 in advanced legal fees for the expungement matter.

29. On May 19, 2008, Garcia called Respondent's office seeking the status of his expungement.

30. On May 20, 2008, Respondent delegated the case to an associate attorney who attempted to file a petition for expungement on Garcia's behalf. On August 20, 2008, the court rejected the petition because the conviction date on the petition was incorrect.

31. On September 23, 2008, Respondent's associate attorney resubmitted the petition for expungement. The court once again rejected the petition because Respondent's office had listed the wrong criminal violation sections on the form. Thereafter, the associate attorney was

instructed to file another amended petition but failed to do so; Respondent failed to adequately supervise his associate attorney's work in this matter.

32. In April 2009, Garcia hired new counsel because he could not reach Respondent for a status update who subsequently filed a motion to reduce felony conviction on Garcia's behalf and successfully had it reduced.

CONCLUSION OF LAW

33. Respondent's office provided no services of value to Garcia in the expungement matter in wilful violation of Rules of Professional Conduct Rule 3-110(A).

(5) Case No. 09-O-12070 – THE HO MATTER

FACTS

34. On December 14, 2006, Grace Shuk-Ting Ho ("Ho") hired Respondent on a contingency fee basis to represent her in a breach of contract matter.

35. On April 26, 2007, Respondent filed a lawsuit on behalf of plaintiffs entitled *Lawrence Law, Grace S.T. Ho v. Michael Chiu et. al.*, in Los Angeles County Superior Court, case no. BC370146 (the "breach of contract action").

36. On July 23, 2007, opposing counsel wrote a letter to Respondent noting that the plaintiff's supplemental responses to discovery in the breach of contract action were overdue. Opposing counsel gave Respondent until August 11, 2007 to provide the responses or defendants would file a motion to compel. Respondent received the July 23, 2007 letter but failed to provide the supplemental responses.

37. On August 31, 2007, the defendants in the breach of contract action filed a motion to compel further discovery responses to special interrogatories, form interrogatories and request for production of documentation. Respondent was properly served with the motion to compel.

38. As of October 4, 2007, Respondent had not filed any opposition to the defendants' motion to compel further responses. As a result, on October 4, 2007, the defendants filed a notice of non-opposition in the breach of contract action. Respondent received the notice.

39. On October 12, 2007, the court in the breach of contract action granted defendants' motion to compel further discovery responses. The court ordered plaintiff to provide complete supplemental response within 30 days of the court's October 12, 2007 hearing. In addition, the court ordered Respondent to pay \$2,000 in sanctions to defense counsel within 60 days of the October 12, 2007 hearing or by December 11, 2007. Respondent received notice of the court's orders.

40. Thereafter, defense counsel gave Respondent a series of extensions until January 18, 2008 to provide the supplemental discovery responses.

41. On January 28, 2008, defendants filed a motion to compel discovery responses.

42. On February 5, 2008, the court in the breach of contract action granted the defendants' motions to compel discovery responses. The court imposed sanctions in the amounts of \$7,850 against both Respondent and plaintiff. Pursuant to the court's February 5, 2008 order, the discovery responses were due from plaintiff within 10 days from the date of the order. In addition, the court ordered Respondent and plaintiff to pay the \$7,850 in sanctions to defense counsel within 10 days of the court's order. On February 8, 2008, Respondent was served with a Notice of Order After Hearing containing the court's February 5, 2008 orders.

43. On March 13, 2008, the court held a hearing and ordered the previously ordered sanctions paid by April 1, 2008.

44. Respondent failed to pay the sanctions by April 1, 2008 as ordered by the court.

CONCLUSION OF LAW

45. By failing to comply with the October 12, 2007 order to pay \$2,000 in sanctions to defense counsel within 60 days, by failing to comply with the February 5, 2008 order to pay \$7,850 in sanctions in 10 days, and by failing to comply with the court's March 13, 2008 order to pay all previously ordered sanctions by April 1, 2008, Respondent willfully disobeyed or violated orders of the court requiring him to do or forbear an act connected with or in the course

of Respondent's profession which he ought in good faith to do or forbear in wilful violation of Business and Professions Code section 6103.

(6) Case No. 10-N-09199 – THE 9.20 MATTER

FACTS

46. On May 26, 2010, the California Supreme Court filed an order, identified as S181713 in *In the Matter of Eugene Wellington Matthews* (the "Order"). The Order included a requirement that Respondent comply with rule 9.20, California Rules of Court, by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the Order.

47. On May 26, 2010, the Clerk of the California Supreme Court served a copy of the Order on Respondent. Respondent received the Order.

48. The Supreme Court Order became effective on June 25, 2010, thirty days after the Order was filed. Thus, Respondent was ordered to comply with subdivision (a) of rule 9.20 of the California Rules of Court no later than on July 25, 2010, and was ordered to comply with rule 9.20(c), by filing a declaration under penalty of perjury regarding his compliance with rule 9.20(a) with the clerk of the State Bar Court by August 4, 2010.

49. On July 29, 2010, Respondent filed his declaration with the State Bar Court. In the declaration, Respondent represented under penalty of perjury, by checking the boxes next to the pre-printed statements, that he had no clients and that he did not represent any clients in pending matters as of the date upon which the Order to comply with rule 9.20 was filed May 26, 2010. In addition, in the declaration, Respondent represented under penalty of perjury, that he had no papers or other property to which clients were entitled and had earned all fees paid to him.

50. As Respondent represented that he had no pending client matters, Respondent did not check the box next to the pre-printed statement that he had complied with the requirements of rule 9.20(a)(4).

51. Respondent represented on his 9.20 declaration filed on July 29, 2010 that he had no clients from the time the May 26, 2010 supreme court order was filed through the time he filed his 9.20 declaration with the court. However, Respondent was attorney of record in four client matters pending before the federal distinct court during that period of time and was therefore required to notify in writing opposing counsel, his clients of his actual suspension and file a copy of such notice with the court but he failed to do so prior to filing his 9.20 declaration. Respondent misunderstood his duties under the rule but his misunderstanding was not reasonable.

52. Subsequently, on September 23, 2010, in a matter pending in United States District Court, Central District of California entitled, *USA v. Arana et. al.*, case number 2:09-cr-01210-PA-2 (the "Flores matter"), the court scheduled a hearing for September 27, 2010 regarding Respondent's suspension and his continued representation of Flores. On or September 23, 2010, the court in the Flores matter ordered that Respondent be prepared on September 27, 2010 to provide evidence of his compliance with Rule 9.20 of the California Rules of Court.

53. On September 27, 2010, the court in the Flores matter removed Respondent as counsel for Flores and appointed a deputy public defender as Flores's counsel. It was at this time that Respondent learned that he was not in compliance with rule 9.20.

54. Respondent did not comply with rule 9.20(a)(4) with respect to the Flores matter, as Respondent did not notify opposing counsel or his client of his actual suspension and, consequently, did not file a copy of such notice with the court.

55. Respondent's declaration filed on July 29, 2010 was materially inaccurate in that Respondent remained as the attorney of record for the defendants in matters which were pending in United States District Court, Central District of California after the supreme court order was filed and after the effective date of his suspension.

56. On October 8, 2010, Respondent filed a supplemental 9.20 declaration with corrections.

CONCLUSION OF LAW

57. By not complying with rule 9.20 with respect to four client matters and by filing the declaration containing inaccuracies with the State Bar Court, Respondent willfully violated rule 9.20, California Rules of Court.

DISMISSALS.

The parties respectfully request the Court dismiss one alleged violation from the NDC in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
08-O-12594	One	Rule 3-110(A), Rules of Professional Conduct
08-O-12594	Two	Rule 3-700(D)(2), Rules of Professional Conduct
08-O-12594	Three	Rule 4-200(A), Rules of Professional Conduct
08-O-12752	Six	Section 6068(m), Business and Professions Code
08-O-14022	Nine	Section 6106, Business and Professions Code
08-O-14022	Twelve	Rule 4-100(A), Rules of Professional Conduct
09-O-11936	Fourteen	Rule 3-700(D)(2), Rules of Professional Conduct
09-O-12070	Fifteen	Rule 3-110(A), Rules of Professional Conduct

SUPPORTING AUTHORITY

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; Std. 1.3.)

Standard 2.4(b) of the Standards for Attorney Sanctions for Professional Misconduct, Rules Proc. Of State Bar, Title IV, provides for reproof or suspension for failure to perform or communicate. Standard 2.3 provides that a violation of moral turpitude shall result in suspension or disbarment and a three-month actual suspension where a CTA dip is concerned. Standard 2.6 provides for suspension or disbarment for a violation of sections 6103 or 6068(i) of the Business and Professions Code. Standard 2.10 provides for reproof or suspension for a violation of a rule not set out in the standards. Standard 1.7(a) provides for an increase in discipline in subsequent proceedings.

The standards are guidelines (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628) and are afforded great weight (*In re Silverton* (2005) 36 Cal.4th 81, 91-92) but they are not applied in a talismanic fashion (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994). The determination of discipline involves an analysis of the standards on balance with any mitigation and aggravation. (Std. 1.6(b); *Segal v. State Bar* (1988) 44 Cal.3d 1077, 1089; *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-11.)

The misconduct and mitigation here occurred during the same time period as the misconduct in Respondent's prior disciplinary matter (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.) The technical violation of rule 9.20 of the California Rules of Court because

Respondent was attorney of record and therefore "had" clients during the time he represented he did not "have" clients requires at least an 18 month actual suspension to protect the public.

Advance Law Group, APC, was run by attorney Wayani Taylor, during Respondent's suspension. Prior to that time, Respondent was attorney of record for four clients in federal district court criminal matters. Respondent was under the unreasonable mistaken belief that a formal substitution of counsel substituting Wayani Taylor in and Respondent out was not required during the period of his suspension because he thought that the clients were technically represented by Advance Law Group, APC. But an entity cannot represent a client. Attorneys represent clients. Respondent's theory was not well thought out and his assumption was unreasonable. He would have only succeeded in having no clients had he filed substitutions in each pending matter. Although represented by counsel at the time, Respondent did not seek advice specifically in regard to federal criminal matters. Respondent did however seek advice regarding superior court criminal matters and had handled those matters properly regarding 9.20 compliance prior to the filing of the Supreme Court order. During his actual suspension, Respondent did not actually practice law.

Typically, a violation of rule 9.20 results in disbarment. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187; *Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In this rare set of circumstances where Respondent due to his honest belief that he did not have clients at the time he filed the 9.20 declaration and upon learning of his mistaken belief supplemented his 9.20 declaration with the correct notice a deviation from disbarment is available. (*Shapiro v. State Bar* (1990) 51 Cal.3d 251.) Respondent acknowledges his shortcomings in 2010 and understands this second chance at rule 9.20 compliance, if violated, means his disbarment.

PENDING PROCEEDINGS.

The disclosure date referred to on page two, paragraph A.(7), was April 27, 2011.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that he was informed that as of April 27, 2011, the estimated prosecution costs in this matter are approximately \$8,536.28.00. Respondent acknowledges that this figure is an estimate only and that it might not include State Bar Court costs (see Bus. & Prof. Code section 6068.10(c)) or taxable costs (see C.C.P. section 1033.5(a)), which will be included in any final cost assessment. Respondent further acknowledges that if this stipulation is rejected or if relief from the stipulation is granted, the costs may increase due to further proceedings. Note that if Respondent fails to pay any installment of disciplinary costs within the time provided herein or as may be modified by the State Bar Court pursuant to section 6086.10, subdivision(c), the remaining balance of the costs is due and payable immediately unless relief has been granted under the Rules of Procedure of the State Bar of California (Rules Proc. of State Bar, rule 5.130 (old rule 286)). Payment of costs is enforceable as provided in Business and Professions Code section 6140.7 and as a money judgment.

(Do not write above this line.)

In the Matter of: Eugene Wellington Matthews, 161396	Case Number(s): 08-O-12594; 08-O-12752; 08-O-14022; 09-O-11936; 09-O-12070; 10-N-09199
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Medical Conditions

- a. Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.
- b. Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of THREE times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for - days *or* - months *or* FOUR years *or*, the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 5.300 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

- c. Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. 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, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

(Do not write above this line.)

In the Matter of: Eugene Wellington Matthews, 161396	Case Number(s): 08-O-12594; 08-O-12752; 08-O-14022; 09-O-11936; 09-O-12070; 10-N-09199
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
JESSICA SEIFERT	\$3,485.75	11/2/2007
JESSICA SEIFERT	\$2,500.00	8/24/2007
GUMARO GARCIA	\$500.00	1/23/2008
GRACE SHUK-TING HO	\$5,925.00	4/1/2008

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **ONE YEAR BEFORE THE PROBATION PERIOD ENDS.**

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

- 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
 - a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

- b. Respondent has kept and maintained the following:
 - i. A written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and,
 - 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
 - c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
 - i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

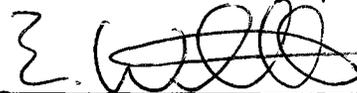
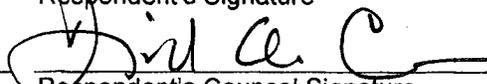
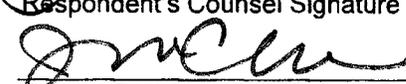
- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

(Do not write above this line.)

In the Matter of: Eugene Wellington Matthews, 161396	Case number(s): 08-O-12594; 08-O-12752; 08-O-14022; 09-O-11936; 09-O-12070; 10-N-09199
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>4-28-11</u> Date	 Respondent's Signature	<u>Eugene Matthews</u> Print Name
<u>4-28-11</u> Date	 Respondent's Counsel Signature	<u>Dave Clare</u> Print Name
<u>4-29-11</u> Date	 Deputy Trial Counsel's Signature	<u>Jean Cha</u> Print Name

(Do not write above this line.)

In the Matter Of
Eugene Wellington Matthews, 161396

Case Number(s):
**08-O-12594; 08-O-12752; 08-O-14022;
09-O-11936; 09-O-12070; 10-N-09199**

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 Terms of Restitution on Page 19 – Financial Conditions – section (a) are in opposition to the Restitution Conditions found on page 5 – Section D. (3)(a)(ii). The court orders the box unchecked on page 5 – Section D. (3)(a)(ii).

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 9.18(a), California Rules of Court.)**

May 4, 2011

Date


Richard A. Platel
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 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 Los Angeles, on May 5, 2011, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID ALAN CLARE
DAVID A CLARE, ATTORNEY AT LAW
444 W OCEAN BLVD STE 800
LONG BEACH, CA 90802

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:

Jean Hee Cha, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 5, 2011.


Cristina Potter
Case Administrator
State Bar Court