

**State Bar Court of California  
Hearing Department  
Los Angeles  
ACTUAL SUSPENSION**

<p>Counsel For The State Bar</p> <p>Mia Ellis State Bar of California 1149 South Hill Street Los Angeles, CA 90015</p> <p>Bar # 228235</p>	<p>Case Number(s): 09-O-11970</p> <p><b>PUBLIC MATTER</b></p>	<p>For Court use only</p> <p><b>FILED</b> MAY -4 2011 <i>[Signature]</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Arthur Margolis Margolis &amp; Margolis LLP 2000 Riverside Drive Los Angeles, CA 90039-3758</p> <p>Bar # 57703</p>	<p>Submitted to: <b>Assigned Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: Mathew Simone</p> <p>Bar # 109915</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted December 12, 1983.
- (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 10 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- 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: the next two 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
  - (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.

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- (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.**

- (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 two 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 two 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 45 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 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:
  - 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 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

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

IN THE MATTER OF: Mathew Simone

CASE NUMBER(S): ET AL. 09-O-11970

**FACTS AND CONCLUSIONS OF LAW.**

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.

1. Beginning in 1999, Sanford (also known as Sandy) and Sharon Letter Kaplan ("Kaplans") employed Respondent to provide accounting, tax and legal services.
  2. Between 1999 and 2005, Respondent prepared tax returns for the Kaplans.
  3. In March 2005, Respondent introduced the Kaplans to another client, Erwin Denk ("Denk"), who was owner and President of Girzi Line USA, a California corporation, ("Girzi").
  4. In February 2005, the California Franchise Tax Board had suspended Girzi.
  5. Between 2004 to 2005, Respondent loaned Girzi money.
  6. Respondent and Denk represented that Girzi was a skin care company that needed a short term investment of capital to fund inventory from Europe. The Kaplans were offered the opportunity to enter into a short term loan agreement to Girzi, which would be repaid within four months, with ten percent (10%) interest.
  7. On March 31, 2005, Sanford Kaplan ("Mr. Kaplan") loaned \$50,000 to Girzi. On that same date, Respondent and Denk executed a secured promissory note to pay Mr. Kaplan \$50,000 with interest from March 31, 2005 on unpaid principal at the rate of ten percent (10%) per annum, principal and interest payable as follows: the balance, including accrued interest, all due and payable July 31, 2005. The note was secured by a Security Agreement signed by Respondent and Denk on March 31, 2005.
  8. On March 31, 2005, Sharon Letter Kaplan ("Mrs. Kaplan") also loaned \$50,000 to Girzi. On that same date, Respondent and Denk executed a secured promissory note to pay Mrs. Kaplan \$50,000 with interest from March 31, 2005 on unpaid principal at the rate of ten percent (10%) per annum, principal and interest payable as follows: the balance, including accrued interest, all due and payable July 29, 2005. The note was secured by a Security Agreement signed by Respondent and Denk on March 31, 2005.
  9. In April 2005, the Kaplans were asked to invest additional funds for Girzi to purchase inventory.
  10. On April 14, 2005, Mr. Kaplan loaned Girzi \$100,000. On that same date, Respondent and Denk executed a secured promissory note to pay Mr. Kaplan \$100,000 with interest from April 14, 2005 on unpaid principal at the rate of ten percent (10%) per annum, principal and interest payable as follows: the balance, including accrued interest, all due and payable August 14, 2005. The note was secured by a Security Agreement signed by Respondent and Denk on April 14, 2005.
- Prior to Girzi accepting the loans on March 31 and April 14, 2005, Respondent did not advise the Kaplans in writing that they may seek advice of an independent lawyer of their choice. Prior to Girzi accepting the loans on March 31 and April 14, 2005, Respondent did not give the Kaplans a reasonable opportunity to seek that advice. Respondent did not obtain the Kaplans' written consent to the terms of the loan transaction.
11. On May 5, 2005, Respondent became Girzi's agent for service of process.
  12. As of August 14, 2005, the amount due and owing to the Kaplans for all three loans was approximately \$220,000.

13. After August 14, 2005, the Kaplans demanded that Girzi, Respondent and Denk pay the principal and interest owing on the loans.
15. As of March 24, 2006, Mr. Kaplan was owed approximately \$155,207 in principal, interest and late charges, and Mrs. Kaplan was owed approximately \$45,388 in principal, interest and late charges.
16. On April 13, 2006, a complaint for damages was filed entitled *Kaplan v. Denk et al.*, San Diego County Superior Court, in case number GIN051848, alleging breach of contract, fraud, breach of fiduciary duties, account stated, and conversion ("lawsuit").
17. On January 5, 2007, the parties entered into a Settlement Agreement and Mutual General Release of Claims ("January 2007 Settlement Agreement") in which Respondent, Denk and Girzi agreed to pay the Kaplans a total of \$190,000 in monthly payment but no later than August 1, 2007. The lawsuit was dismissed.
18. In the January 2007 Settlement Agreement, Respondent attempted to include language that stated that as long as Defendants do not default on payment of the settlement, the Kaplans, their attorneys, and agents agree that they will not file, or cause to be filed, any type of complaint with the State Bar of California. During this time, Respondent experienced serious medical problems and contends that he lacked the best judgment.
19. The Kaplans were not paid in accordance with the January 2007 Settlement Agreement.
20. The Kaplans filed a second lawsuit to enforce judgment against Denk, Respondent, and Girzi in *Kaplan v. Denk, et al.* in San Diego Superior Court, case number 37-2007-00057766-CU-BC-NC.
21. On November 12, 2008, the court entered judgment for the Kaplans in the amount of approximately \$190,000 plus interest commencing on or about August 1, 2007.
22. In August 2009, the Kaplans, and Respondent, Denk and Girzi entered into a stipulation to stay the enforcement, payments and order. The stipulation provided that Respondent would pay the Kaplans \$12,000 no later than August 21, 2009. Respondent, Denk and Girzi would then pay \$2500 per month to the Kaplans beginning September 15, 2009 and continuing until it was paid in full, including a \$15,000 payment on July 15 of each year.
23. On August 7, 2009, Respondent wrote a letter to Sampson. In the letter, Respondent asked that language be added to a stipulation that provides that upon creditors, including the Kaplans, receiving the initial payment of \$12,000, they will write a letter to the State Bar of California withdrawing their complaint against Respondent. During this time, Respondent experienced serious medical problems and contends that he lacked the best judgment.
24. On August 24, 2009, Respondent paid \$12,000 to the Kaplans attorney.

### **Conclusions of Law**

By introducing the Kaplans to the investment transaction with Girzi without fully disclosing his relationship with Girzi, by executing the three promissory notes and three Security Agreements, and by failing to advise the Kaplans that they may seek the advice of independent counsel, and without obtaining their informed written consent to the terms of the business transaction, Respondent improperly entered into a business transaction with a client in wilfull violation of Rules of Professional Conduct, rule 3-300.

By writing and sending Sampson the letter dated August 7, 2009, Respondent sought agreement that the Kaplans would withdraw a disciplinary complaint made against Respondent to the State Bar of California as a disciplinary agency in wilfull violation of Business and Professions Code, section 6090.5(a)(2).

By executing the January 2007 Settlement Agreement with the Non-Disclosure of Settlement language, Respondent sought agreement that his professional misconduct or the terms of the settlement of a claim



for professional misconduct would not be reported to the State Bar as a disciplinary agency in wilfull violation of Business and Professions Code, section 6090.5(a)(1).

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was April 13, 2011

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 13, 2011, the prosecution costs in this matter are \$2903.50. 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.

**MITIGATING FACTORS**

Although the misconduct is serious, Respondent has had no prior record of discipline since being admitted to the practice of law on December 12, 1983.

**AUTHORITIES SUPPORTING DISCIPLINE.**

Standard 2.8 provides that culpability of a member of a wilful violation of rule 3-300, Rules of Professional Conduct, shall result in suspension unless the extent of the member's misconduct and the harm to the client are minimal, in which case, the degree of discipline shall be reproof.

**STATE BAR ETHICS SCHOOL.**


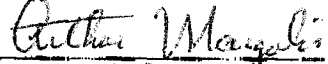
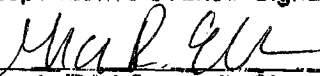
Because Respondent has agreed to attend State Bar Ethics School as part of this stipulation, Respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

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In the Matter of: Mathew Simone	Case number(s): 09-O-11970
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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.

4/14/11 Date	 Respondent's Signature	MATHEW W. SIMONE Print Name
4/17/11 Date	 Respondent's Counsel Signature	ARTHUR L. MARGOLIS Print Name
4/21/11 Date	 Deputy Trial Counsel Signature	Mark Ellis Print Name

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In the Matter of: MATHEW SIMONE	Case Number(s): 09-O-11970
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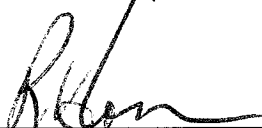
**ACTUAL SUSPENSION ORDER**

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 5.58(E) & (F), 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.)**

5/2/11  
Date

  
\_\_\_\_\_  
Judge of the State Bar Court  
**RICHARD A. HONN**

**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 4, 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:

ARTHUR LEWIS MARGOLIS  
MARGOLIS & MARGOLIS LLP  
2000 RIVERSIDE DR  
LOS ANGELES, CA 90039

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:

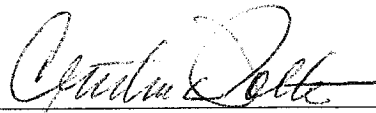
by fax transmission, at fax number . No error was reported by the fax machine that I used.

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:

Mia R. Ellis, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 4, 2011.

  
\_\_\_\_\_  
Cristina Potter  
Case Administrator  
State Bar Court