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State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

<p>Counsel For The State Bar</p> <p>Diane J. Meyers 1149 S. Hill St. Los Angeles, CA 90015 (213) 765-1000</p> <p>Bar # 146643</p>	<p>Case Number(s): 10-O-07060</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>AUG 09 2011</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Derek T. Anderson 1850 5th Avenue San Diego, CA 92101-2713 (619) 237-0099</p> <p>Bar # 208141</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: Andrew MacLaren Stewart</p> <p>Bar # 204170</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 6, 1999.
- (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 15 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: (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. Respondent's misconduct involves three violations of rule 3-300 of the Rules of Professional Conduct; and violations of rules 4-100(A) and 4-100(B)(3) of the Rules of Professional Conduct.
- (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. While Respondent's misconduct is deemed serious, Respondent was admitted to the State Bar of California on December 6, 1999 and has no prior record of discipline.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct. No harm resulted to any client as a result of Respondent's failure to maintain funds in his trust account.
- (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. Respondent expressed his remorse for his misconduct to the State Bar and recognition of wrongdoing by entering into this stipulation, thereby saving the resources of the State Bar. (See In the Matter of Yagman (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788, 807.)
- (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. See Additional Mitigating Circumstances at p. 4.

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- (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:

At the time of Respondent's misconduct, Respondent suffered from bi-polar disorder. Respondent's disorder has been under control since that time with medication. Respondent's disorder contributed to his misconduct. The disorder caused Respondent to be disorganized with respect to his client trust account which led to the short fall in his client trust account and the error in his accounting to Juan Munoz. Further, at the time of Respondent's misconduct, he suffered from personal problems which led to the filing of his marital dissolution in April 2008. His marital dissolution led to financial problems, including the short sale of his home at the end of 2008. Respondent's dissolution was not finalized until December 2010. Respondent characterizes his personal problems as the most difficult moments he has ever experienced in his personal life. His personal problems caused him to be heavily distracted during that time period and contributed to his misconduct in 2009. Respondent took rehabilitative steps by voluntarily attending the State Bar's Client Trust Accounting School on April 28, 2011. While restitution paid under the force or threat of disciplinary proceedings is not a mitigating factor, on July 20, 2011, Respondent made restitution to Mr. Munoz in the amount of \$1,174, representing the amount that was improperly withheld from Mr. Munoz as a result of Respondent's erroneous accounting. (Hitchcock v. State Bar (1989) 48 Cal.3d 690, 709.)

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D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of one year.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.
- (2) **Probation:**

Respondent must be placed on probation for a period of two years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 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 60 days.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in 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.

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- (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: Respondent attended Ethics School on June 9, 2011 as a condition of this stipulation.
- (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.**
- 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:**

G. Supporting Authority:

Culpability of a member of a wilful violation of rule 3-300 of the 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. (Standard 2.8, Standards for Attorney Sanctions for Professional Misconduct.)

Culpability of a member of wilful misappropriation of entrusted funds shall result in disbarment. Only if the amount of funds misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline

shall not be less than one year actual suspension, irrespective of mitigating circumstances. (Standard 2.2(a).) Culpability of a member of another violation of rule 4-100 of the Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds shall result in at least a three-month actual suspension from the practice of law, irrespective of mitigating circumstances. (Standard 2.2(b).)

However, the standards, while entitled to great weight, do not mandate a specific discipline. The court is "not bound to follow the standards in talismanic fashion. . .," but the Supreme Court is ". . .permitted to temper the letter of the law with considerations peculiar to the offense and the offender." [Citations.] ". . .[A]lthough the standards were established as guidelines, ultimately, the proper recommendation of discipline rest[s] on a balanced consideration of the unique factors in each case. [Citations.] " (In the Matter of VanSickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.)

In cases where the Court has not disbarred attorneys for wilful misappropriation of client funds, there were a variety of extenuating circumstances warranting lesser discipline. In some cases, the attorney had presented evidence of compelling mitigating circumstances relating to the attorney's background or character or to unusual difficulties the attorney was experiencing at the time of the misconduct, which tended to prove that the misconduct was aberrational and thus unlikely to recur. (E.g., Howard v. State Bar (1990) 51 Cal.3d 215, 222 [rehabilitation from alcoholism and drug dependency]; Weller v. State Bar (1989) 49 Cal.3d 670, 675 [emotional strain; character testimonials]; Friedman v. State Bar (1990) 50 Cal.3d 235, 245 [stress of marital problems; long, unblemished record of legal practice]; Chefsky v. State Bar (1984) 36 Cal.3d 116, 132 [long, unblemished record; illness; relocation of practice].)

"An attorney who deliberately takes a client's funds, intending to keep them permanently, and answers the client's inquiries with lies and evasions, is deserving of more severe discipline than an attorney who has acted negligently, without intent to deprive and without acts of deception." (Edwards v. State Bar, supra, 52 Cal.3d at p. 38.) A negligent misappropriation quickly and voluntarily remedied might not require any actual suspension (Waysman v. State Bar (1986) 41 Cal.3d 452) or only a short period of actual suspension. (In the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113).

In Hunnicutt v. State Bar (1988) 44 Cal.3d 362, an attorney had abandoned two clients and violated the predecessor to rule 3-300. He persuaded his client, by personally guaranteeing the loan, to invest the proceeds of a personal injury settlement that he obtained for the client in an unsecured real estate transaction in which the attorney had an interest. The real estate venture resulted in large losses to the attorney, and he was unable to repay the loan. The Supreme Court affirmed a finding of moral turpitude and ordered a 90-day actual suspension and restitution.

In Ritter v. State Bar (1985) 40 Cal. 3d 595, the Supreme Court found a business transaction between the attorney and client reasonable, but there was a violation of the predecessor to rule 3-300, because no opportunity was given for the client to discuss the transaction with a third person. The loan agreement between the attorney and the client was signed by the client upon presentation. The attorney was suspended for 60 days.

In In the Matter of Lane (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735, the attorney loaned his client \$100,000 without complying with rule 3-300. Thereafter, he represented the client, sued the client and was a co-defendant with the client, resulting in repeated violations of the Rules of Professional Conduct, but

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no finding of moral turpitude. In mitigation, the attorney showed 25 years of practice without discipline and a good reputation in the community. The attorney was suspended for 60 days.

Balancing the mitigating and aggravating factors present, deviation from standards 2.2(a) and (b) is warranted and a 60-day actual suspension is recommended.

Attachment language (if any):

Respondent admits that the following facts are true and that he is culpable of the following violations:

FACTS:

1. In October 2005, Juan Munoz (“Munoz”) employed Respondent to represent him in his personal injury claims related to his fall through a roof while working at a construction site. On October 10, 2005, Munoz and Respondent entered into a contingency fee agreement. Under the fee agreement, Respondent was entitled to 45 percent of the gross recovery he obtained on behalf of Munoz by way of settlement or judgment.
2. On October 19, 2005, Respondent filed a lawsuit on behalf Munoz in the San Diego County Superior Court entitled, Juan Munoz v. Good & Roberts, Inc., et al., case number GIC855618 (the “action”).
3. During the representation, Respondent associated the law firm of Girardi & Keese (“Girardi”) to represent Munoz. Attorney Andre Rekte (“Rekte”) of Girardi became co-counsel of record for Munoz in the action.
4. On September 29, 2006, Munoz and Respondent entered into another contingency fee agreement (the “second fee agreement”). Under the second fee agreement, Respondent was entitled to 50 percent of the gross recovery he obtained on behalf of Munoz by way of settlement or judgment before a lawsuit was filed, or 56 percent of the gross recovery he obtained on behalf of Munoz through mediation, arbitration or jury trial in the Superior Court. In sum, Respondent’s pecuniary interest in the gross recovery increased by 11 percent under the second fee agreement. Respondent also was granted a lien against, or security interest in, all recoveries obtained on behalf of Munoz for any fees due under the second fee agreement.
5. Respondent did not advise Munoz in writing that he may seek the advice of an independent lawyer of Munoz’s choice regarding the second fee agreement. Consequently, Respondent did not give Munoz a reasonable opportunity to seek that advice and Munoz did not thereafter consent in writing to the terms of the transaction or acquisition.
6. On April 4, 2007, Respondent loaned \$15,000 to Munoz pursuant to a written agreement signed by Munoz. In return, Munoz agreed to repay Respondent \$17,000 once settlement funds related to his claims were received; \$20,000 if \$17,000 was not repaid by July 4, 2007; and \$25,000 if the original loan amount was not paid by January 1, 2008.
7. On April 5, 2007, Munoz entered into a written settlement of his claims with defendants Good & Robert, Inc. and Cement Cutting, Inc. for \$1,200,000 plus a \$700,000 annuity. Under the settlement, Arch Specialty Insurance Company (“Arch”) would pay \$1,050,000 to Girardi and Munoz, which included attorney fees for services performed on behalf of Munoz; AI Specialty Lines Insurance Company would pay \$150,000 to Girardi and Munoz, which included attorney fees for services performed on behalf of Munoz; and commencing on May 25, 2007, Arch would make periodic payments to Munoz of \$4,578 per month for 20 years, with a present value of \$700,000.

8. On May 9, 2007, Respondent deposited \$1,050,000 received from Arch under the settlement into his client trust account at Bank of America (the "CTA").

9. Respondent did not advise Munoz in writing that he may seek the advice of an independent lawyer of Munoz's choice regarding the terms of the \$15,000 loan. Consequently, Respondent did not give Munoz a reasonable opportunity to seek that advice and Munoz did not thereafter consent in writing to the terms of the transaction or acquisition.

10. Collectively, Respondent and Girardi were entitled to \$1,064,000 for attorney fees (or 56 percent of \$1,900,000) and to reimbursement of costs advanced on behalf of Munoz.

11. In May 2007, Respondent had Munoz sign an acknowledgment and receipt of settlement funds, and provided Munoz with the following accounting of the settlement funds:

Attorney fees:	\$1,064,000.00
20 year annuity:	\$ 700,000.00
Litigation costs:	\$ 44,711.02
Fee to workers' comp lawyer:	\$ 1,000.00
Repayment of loan	\$ 17,000.00
Lump sum to Munoz	\$ 74,000.00

12. Respondent's accounting was inaccurate as the items totaled \$1,900,711.02, not \$1,900,000. Also, the actual total of the costs advanced on behalf of Munoz by Respondent and Girardi, as of April 2007, was \$43,537.02, not \$44,711.02.

13. Respondent also provided Munoz with an itemized accounting of the costs advanced on his behalf, dated April 10, 2007, indicating that the total advanced was \$44,711.02. The cost accounting was overstated by \$1,174. Respondent's \$44,711.02 total already included the \$1,000 owed to Munoz's workers' compensation attorney, John Garcia ("Garcia"). Neither Respondent nor Girardi had advanced \$1,000 to Garcia as of the date of the accounting. Respondent did not pay Garcia \$1,000 until May 31, 2007, after depositing the \$1,050,000 from Arch into the CTA on May 9, 2007. Consequently, Munoz was paid \$74,000 from the CTA on May 22, 2007, instead of \$75,174.

14. Between April 26 and May 16, 2007, Respondent deposited eleven settlement drafts into his client trust account at Bank of America (the "CTA"), received on behalf of five clients, totaling \$52,991 (\$731, \$1,260, \$2,000, \$2,000, \$2,000, \$15,000, \$15,000, \$1,062, \$1,591, \$4,248 and \$8,099). From the gross settlement of \$52,991, a lien holder of one of the clients was entitled to \$5,438, and the clients were entitled to \$24,448.28. Respondent was entitled to the balance of \$23,104.72.

15. Between April 30 and June 25, 2007, Respondent withdrew more than the \$23,104.72 that he was entitled to from the gross settlement of \$52,991. Particularly, Respondent cashed check numbers 1175, 1176, 1179, 1185 and 1188 from the CTA totaling \$30,774.72 and payable to Respondent.

16. Also on June 25, 2007, check number 1184 from the CTA for \$5,438 to a representative of the lien holder was paid, causing the balance in the CTA to fall to \$21,527.17, or \$2,921.11 below the

\$24,448.28 that should have remained in the CTA on behalf of the clients from the gross settlement of \$52,991.

17. On June 26, 2007, check number 1187 from the CTA for \$12,224.14 and payable to one of the five clients was paid, causing the balance in the CTA to fall to \$9,303.03, or \$2,921.11 below the \$12,224.14 that should have remained in the CTA on behalf of the clients from the gross settlement of \$52,991.

18. On July 2, 2007, check number 1186 from the CTA for \$12,224.14 to one of the five clients was presented for payment. At the time of presentment, the balance in the CTA was \$9,303.03. Bank of America paid check number 1186 against insufficient funds, charged a \$20 overdraft fee, and notified Respondent of the insufficient funds activity caused by check number 1186.

19. On July 3, 2007, Respondent deposited \$2,941.11 to cover the insufficient funds activity in the CTA, bringing the balance in the CTA to \$12,224.14.

20. On July 3, 2007, check number 1186 from the CTA was cashed.

21. On January 15, 2009, Respondent loaned \$20,000 to Munoz pursuant to a written agreement signed by Munoz. In return, Munoz agreed to repay Respondent \$35,000; consented to selling a portion of Munoz's annuity to repay Respondent; employed Respondent to broker the annuity sale for a broker fee of \$10,000; and agreed to repay all costs and fees advanced by Respondent relating to the brokerage deal.

22. Respondent did not advise Munoz in writing that he may seek the advice of an independent lawyer of Munoz's choice regarding the terms of the \$20,000 loan. Consequently, Respondent did not give Munoz a reasonable opportunity to seek that advice and Munoz did not thereafter consent in writing to the terms of the transaction or acquisition.

23. The terms of the loan were not fully disclosed and transmitted in writing to Munoz in a manner which should reasonably have been understood by him. Respondent did not tell Munoz when the \$35,000 was due; what portion of the annuity would be sold and how the sale would affect the value of the annuity; how the funds from the sale would be collected and maintained; and the nature and amount of the costs and fees related to the brokerage deal.

24. With court approval, Allstate Advance Funding, LLC ("Allstate") purchased a portion of Munoz's annuity, consisting of \$1,274 of each monthly payment of \$4,574 commencing on May 31, 2009 and continuing through and including April 30, 2027, in exchange for \$90,000. Ultimately, Munoz received Allstate's share for the months May, June, July and August 2009, or \$5,096 (i.e., four payments of \$1,274), so the gross proceeds from the sale was \$84,879 (\$90,000 less \$5,096 less a \$25 wire fee). Allstate paid Munoz and Respondent \$81,057 in July 2009, and withheld \$3,822 (i.e., three payments of \$1,274).

25. On July 7, 2009, Respondent had Munoz sign a written acknowledgement that collecting the balance from the \$90,000 was Munoz's responsibility; that Munoz was entitled to \$44,170 from the \$90,000, and that Respondent was entitled to \$45,830 from the \$90,000, or \$35,000, plus \$10,000 as a broker fee, plus \$830 described as an "advanced fees for notary, shipping, etc." On July 28, 2009, Respondent deposited the \$81,057 into the CTA. On July 29, 2009, Respondent withdrew \$45,830.80 from

the CTA pursuant to his agreement with Munoz. On August 3, 2009, Respondent paid Munoz the balance of \$35,226.20 from the CTA. In September 2009, Munoz received \$3,797 (\$3,822 less a wire fee of \$25) from the money withheld by Allstate.

CONCLUSIONS OF LAW:

1. By entering into the second fee agreement with Munoz on September 29, 2006, Respondent entered into a business transaction with a client and knowingly acquired a security and pecuniary interest adverse to a client without complying with the requirements that the client was advised in writing that the client may seek the advice of an independent lawyer of the client's choice; the client was given a reasonable opportunity to seek that advice; and the client thereafter consented in writing to the terms of the transaction or acquisition, in wilful violation of rule 3-300 of the Rules of Professional Conduct.
2. By loaning Munoz \$15,000 pursuant to the written agreement on April 4, 2007, Respondent entered into a business transaction with a client and knowingly acquired a pecuniary interest adverse to a client without complying with the requirements that the client was advised in writing that the client may seek the advice of an independent lawyer of the client's choice; the client was given a reasonable opportunity to seek that advice; and the client thereafter consented in writing to the terms of the transaction or acquisition, in wilful violation of rule 3-300 of the Rules of Professional Conduct.
3. By providing inaccurate accountings to Munoz in April and May 2007 regarding the \$1,900,000 settlement and the costs and overcharging Munoz by \$1,174, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, in wilful violation of rule 4-100(B)(3) of the Rules of Professional Conduct.
4. By not maintaining \$24,448.28 in the CTA on June 25, 2007 and by not maintaining \$12,224.14 in the CTA from June 26 to July 2, 2007, 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 rule 4-100(A) of the Rules of Professional Conduct.
5. By loaning Munoz \$20,000 pursuant to the written agreement on January 15, 2009, Respondent entered into a business transaction with a client and knowingly acquired a pecuniary interest adverse to a client without complying with the requirements that the terms of the transaction are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; the client was advised in writing that the client may seek the advice of an independent lawyer of the client's choice; the client was given a reasonable opportunity to seek that advice; and the client thereafter consented in writing to the terms of the transaction or acquisition, in wilful violation of rule 3-300 of the Rules of Professional Conduct.

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In the Matter of: Andrew MacLaren Stewart	Case Number(s): 10-O-07060
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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

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

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:
- 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

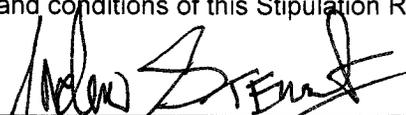
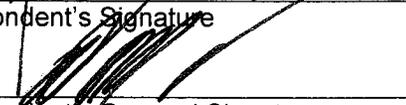
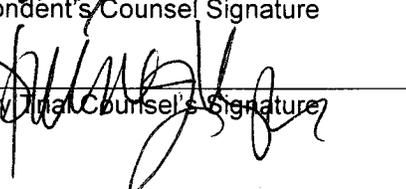
- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

(Do not write above this line.)

In the Matter of: Andrew MacLaren Stewart	Case number(s): 10-O-07060
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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>7-28-11</u> Date	 Respondent's Signature	<u>Andrew M. Stewart</u> Print Name
<u>7/28/2011</u> Date	 Respondent's Counsel Signature	<u>Derek T. Anderson</u> Print Name
<u>7/29/11</u> Date	 Deputy Trial Counsel's Signature	<u>Diane J. Meyers</u> Print Name

(Do not write above this line.)

In the Matter of: Andrew MacLaren Stewart	Case Number(s): 10-O-07060
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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.)**

8/8/11
Date



Judge of the State Bar Court

DONALD F. MILES

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 August 9, 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:

DEREK T. ANDERSON, ESQ.
1850 5TH AVE
SAN DIEGO, CA 92101 - 2713

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

DIANE MEYERS, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 9, 2011.



Rose Luthi
Case Administrator
State Bar Court