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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Esther Rogers Deputy Trial Counsel State Bar of California 180 Howard Street San Francisco, CA 94105 (415)538-2258 Bar # 148246	Case Number(s): 10-O-07558	For Court use only RECEIVED JUN 13 2011 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO PUBLIC MATTER FILED JUN 20 2011 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Alan J. Sternberg Law Ofc Alan J Sternberg P O Box 895 Orinda, CA 94563 Bar # 48741	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Alan J. Sternberg Bar # 48741 A Member of the State Bar of California (Respondent)		

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 January 7, 1971.
- (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 12 pages, not including the order.



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

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- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

- (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. See Attachment
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline:

(1) ☒ **Stayed Suspension:**

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

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.

ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

(b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of 1 year, 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.
- (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 type="checkbox"/> Medical Conditions | <input 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 TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Alan J. Sternberg

CASE NUMBER(S): 10-O-07558

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.

FACTS AND CONCLUSIONS OF LAW.

Count One

Facts

Prior to in or about January 2009, Silvio Cruz, a Brazilian immigrant, performed general labor services for Reza Fakurnejad and his construction company RC Group. Cruz speaks very little English. Prior to in or about January 2009, Cruz and Fakurnejad had a dispute regarding past wages Fakurnejad owed Cruz. Prior to in or about January 2009, Cruz's friend, Estefanio Silva, filed a worker's compensation claim against Fakurnejad. Silva alleged that Fakurnejad was responsible for providing him worker's compensation benefits as a result of an injury Silva suffered when he was working for Fakurnejad.

On or about January 26, 2009, respondent provided Fakurnejad with a letter respondent drafted that assisted Fakurnejad in his defense of Silva's worker's compensation claim. The letter respondent drafted was in English. Attached hereto as Exhibit 1 is true and correct copy of the letter respondent drafted. On or about January 26, 2009, Fakurnejad provided the letter to Cruz and informed Cruz that he would pay Cruz's back wages if Cruz signed the letter. Cruz failed to sign the letter.

Thereafter, respondent left Cruz at least four voicemail messages demanding that Cruz sign the letter. Attached hereto as Exhibit 2 is a transcription of the voicemail messages. In the second, third and fourth voicemail messages respondent threatened to turn Cruz over the INS and ICE if Cruz failed to provide him with the signed letter.

By engaging in this conduct, respondent threatened an administrative action against Cruz to gain an advantage in the worker's compensation matter between Silva and Fakurnejad.

Conclusions of Law

By threatening to turn over Cruz to the INS and ICE if Cruz failed to sign the letter, respondent threatened to present administrative charges to obtain an advantage in a civil dispute, in willful violation of Rules of Professional Conduct, rule 5-100(A).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(6), was May 25, 2011.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 3, 2011, the prosecution costs in this matter are approximately \$3,000. 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.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Standard 1.2(b)(i)) Effective May 17, 1990, in case number 87-O-1033, respondent received a public reproof for violating Business and Profession Code sections 6068(a) and 6103 and for violating former Rules of Professional Conduct, rule 6-101(A)(2).

MITIGATING CIRCUMSTANCES.

Cooperation (Standard 1.2(e)(v)) Respondent agreed to the imposition of discipline without requiring a hearing.

SILVIO JUNIOR DA CRUZ

1624 Eighth Street
Berkeley, CA 94710

January 26, 2009

Mr. ~~Reza Fakurnejad~~
RC Group
962 Bollinger Canyon Road
Moraga, CA 94556

Re: Estefanio Silva
Date of Injury: 1/18/07

Dear Mr. Fakurnejad:

It is my understanding that a Workers Compensation claim has been made against you and RC Group by Estefanio Silva, who claims to have been injured on a renovation project at your property which you own in Vallejo, CA, on January 18, 2007. Mr. Silva was a friend of mine who was visiting with me; he never performed any work at any time on any project or property which you own.

By way of background, I confirm that I am an independent contractor, that you pay me as an independent contractor and not an employee for services which I perform on your properties, and I keep records of where and when I have performed these services for you.

Mr. Silva's claim, dated January 18, 2007, allegedly occurred at a property of yours in Vallejo, CA. I have performed labor and provided materials to your properties for several years, and I know that you never have owned or managed property in Vallejo, CA. Further, you have informed me that RC Group was formed in June 2007, so it is not possible that RC Group was ever involved with Mr. Silva.

In fact, Mr. Silva visited me on a job site, not yours, and never performed any services, any where or at any time, for you. While Mr. Silva did apparently fall off a ladder and injured himself, this incident was not in any way related to you or a property owned by you.

I am prepared to testify to the statements in this letter should my testimony become necessary. I sign this letter under penalty of perjury.

Sincerely,

Silvio ~~Junior Da Cruz~~



Transcription of Voicemail Messages Left By Alan Sternberg for Silvio Cruz

Voicemail #1

Junior, this is Attorney Alan Sternberg, Walnut Creek, I represent Reza and I've prepared the letter that he gave you to sign today. My number is 925-932-3200 and if you have questions regarding this letter please call me and I will try to explain it to you. Your signature is needed on this letter and your signature has to be notarized, it's a legal document and ah then Reza will give you ah the \$3,000 that ah you want to have. So call me at 925-932-3200. Thank you.

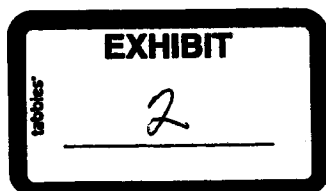
Voicemail #2

Junior, this is Attorney Alan Sternberg again, I'm the attorney for Reza Fakurnejad and he has absolutely demanded that you sign the letter he prepared and get it back to him because if I don't have it by Monday, he's asked me to contact make contact with my people at the INS about your status as an immigrant and also, the status of ah your friend. So, if you're not going to cooperate with me, you're going to be very sorry. And so is Estefanio Silva, we know that he is an illegal man and we're going to turn him over. So, either you get that letter back, signed, and notarized, or we take action. I'm not a nice, kind guy like Reza, I'm an attorney and I will take action against you and against Estefanio if you don't cooperate. This is my last call to you, the next call I make is to the ICE people and we will see how your status holds up. Don't play with me; you don't want me on your case. Get the thing signed; get it back to Reza this weekend so that he can get it to me Monday. If you're involved in some scam with this injury case, we will sue you so you're going to lose your business connection with Reza. You're going to get in trouble with the INS, you're going to get sued, that's a real unpleasant situation for you to be in. We need you to sign that letter. You know it's the truth and the letter is saying the truth so sign it. Thank you.

Voicemail #3

[Prompt in Spanish]

Junior, this is Attorney Alan Sternberg, my client, Reza Fakurnejad and our people are really ticked off with you. You have not delivered the letter with your signature. There is only one thing that we can assume and that is, if you are in cahoots with Estefanio Silva, trying to defraud the system and filing a false claim. If that letter is not signed, notarized, and returned to Reza Fakurnejad by noon tomorrow, Thursday at noon, I am contacting INS and ICE on your status and Estefanio Silva's status. I'm further filing a complaint for my client with the State Bar involving this bogus claim by Mr. Silva which my client thinks that you are involved in and so maybe the attorney. We are not playing games here, if you don't have that letter back to us signed, you are in plenty of trouble. You are going to be out on your ear, back to Mexico, or wherever you came from. You better get this done, taken care of. Bye.



Voicemail # 4

[Prompt in Spanish]

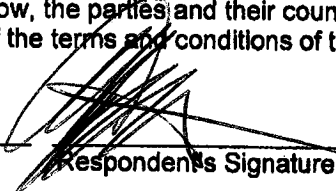
Junior, this is Attorney Alan Sternberg, noon has come and gone we don't have your agreement. I am sending a letter and a phone call to the head of the ICE group in Contra Costa County, part of the INS and homeland security. You're in big trouble buddy. You don't play with me, I told you not to mess with me. You better get that letter in before I call these people and you better do it with Reza and you better contact him as fast as you can, get that over to him. You're jerking around with the wrong person. Bye.

(Do not write above this line.)

In the Matter of: Alan J. Sternberg	Case number(s): 10-O-07558
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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>6/9/11</u> Date	 Respondent's Signature	<u>Alan J. Sternberg</u> Print Name
<u>6/13/11</u> Date	<u>Esther Rogers</u> Deputy Trial Counsel's Signature	<u>Esther Rogers</u> Print Name

(Do not write above this line.)

In the Matter of: Alan J. Sternberg	Case Number(s): 10-O-07558
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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.)

Date

June 20, 2011

Judge of the State Bar Court

LUCY ARMENDARIZ

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 San Francisco, on June 20, 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:

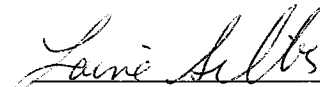
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ALAN J. STERNBERG
LAW OFC ALAN J STERNBERG
P O BOX 895
ORINDA, CA 94563

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

ESTHER ROGERS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 20, 2011.



Laine Silber
Case Administrator
State Bar Court