



ORIGINAL

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

Counsel For The State Bar Jean Cha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1000 Bar # 228137	Case Number(s): 10-O-09442 10-O-10249 10-O-10250 11-O-11516 - PEM 11-O-15197 (INV)	For Court use only <p align="center">PUBLIC MATTER</p> <p align="center">FILED</p> <p align="center">OCT 06 2011 <i>CH</i></p> <p align="center">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
In Pro Per Respondent Gregory S. Emerson 1055 Wilshire Blvd Ste 1996 Los Angeles, CA 90017 (213) 250-9100 Bar # 205053	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Gregory Scott Emerson Bar # 205053 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 December 8, 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 23 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: 2013, 2014 & 2015. (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 00-O-13198, Supreme Court order no. S107294
 - (b) ☒ Date prior discipline effective September 1, 2002
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct rule 4-100(A) & rule 4-200(A).
 - (d) ☒ Degree of prior discipline Two Years Probation, with 30 days actual suspension and restitution.
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☒ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct. Respondent's misconduct involved moral turpitude.
- (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. Goddard, Nixon, and Learmont were harmed because they were misled as to the status of their cases. Nixon was harmed because he was deprived of his funds and the failure to perform caused detrimental delay. Oscar was seriously harmed by the failure to perform and default judgment.

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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:

N/A

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

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (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. During the time of the misconduct Respondent suffered from depression and emotional stress related to the dissolution of his marriage commencing in 2003, for a time, and again in 2006, which was finalized in July 2011. Respondent had difficulty informing his clients in the Goddard, Nixon, and Learmont matters with truthful status updates in part, due to a psychological disposition and an acute fear where he feared being the bearer of adverse news. Instead, Respondent would provide false information to mask the true status due to his fear. Since early 2009, Respondent has been seeking counseling for his disorder and with the assistance of a licensed psychotherapist has identified a treatment program where Respondent is demonstrating rehabilitation.

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- (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. During the time of the misconduct, Respondent's wife was suffering from severe debilitating personal issues, including depression resulting in her hospitalization, that distracted Respondent from his responsibilities and caused great distress and anxiety in their personal lives. Those factors have since been resolved through the dissolution of their marriage.
- (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. Eight character references expressed their belief in Respondent's integrity and honesty even with the knowledge of the misconduct and believe that the conduct was due to error and will not recur. (Std. 1.2(e)(vi).)
- (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:

Respondent has been cooperative. (Std. 1.2(e)(v); Silva-Vidor v. State Bar (1989) 49 Cal.3d 1071, 1079; Pineda v. State Bar (1989) 49 Cal.3d 753, 760.)

As to the Idaho matter, case no. 10-O-09442, Reynolds is a family friend of Respondent, Respondent assisted with that matter as a favor and not for fees after Reynolds approached Respondent because Reynolds was unsuccessful at getting movement on his claim with his own insurance company. All parties involved in the claim were aware that Respondent was not licensed in Idaho. Respondent acknowledges the restrictions on the practice of law in sister jurisdictions.

Respondent has provided pro bono legal services over the past decade to approximately 7 clients per year.

Respondent recognizes his wrongdoing, is remorseful, and contrite.

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.

(Effective January 1, 2011)

Actual Suspension

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of THREE 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 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:

E. Additional Conditions of Probation:

(1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

(2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

(5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

(6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☒ The following conditions are attached hereto and incorporated:
- | | |
|--|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input checked="" type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

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

Attachment language (if any):

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

IN THE MATTER OF: GREGORY SCOTT EMERSON, 205053
CASE NUMBERS: 10-O-09442; 10-O-10249; 10-O-10250;
 11-O-11516-PEM; 11-O-15197 (INV)

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

(1) Case No. 10-O-09942 (The Idaho UPL Matter)

FACTS

1. Respondent is not licensed to practice law in the State of Idaho.
2. In August 2009, Respondent agreed to represent James Reynolds on a pro bono basis ("Reynolds") in an underinsured motorist claim arising from a vehicular accident which occurred in the State of Idaho.
3. On August 17, 2009, Respondent sent a demand letter to Natasha Byram ("Byram"), a representative of the Cincinnati Insurance Company ("Cincinnati"), by which Respondent asserted an underinsured motorist claim on behalf of Reynolds under an insurance policy issued by Cincinnati in the State of Idaho to Reynolds, a resident of Idaho.
4. On August 19, 2009, Robert D. Lewis ("Lewis"), an attorney licensed to practice in the State of Idaho and counsel for Cincinnati, mailed a letter to Respondent informing Respondent that he represented Cincinnati regarding Reynolds's underinsured motorist claim.
5. On October 9, 2009, Lewis mailed a letter to Respondent enclosing a check issued by Cincinnati and payable to Reynolds and Respondent in the sum of \$100,000 in settlement of Reynolds's claim. Respondent received the check and deposited it in his client trust account on October 11, 2009. Respondent subsequently disbursed the full amount to Reynolds. Reynolds received the funds. Respondent took no fee for his services or the representation.
6. In August, 2010, Respondent contacted Cincinnati directly to demand supplemental settlement funds.

7. On August 18, 2010, Lewis mailed a letter to Respondent regarding the settlement funds and encouraging Respondent to engage a properly licensed Idaho attorney pursuant to rule 5.5 of the Idaho Rules of Professional Conduct.

8. On August 21, 2010, Respondent sent a letter to Lewis by which Respondent demanded further underinsured motorist payments on behalf of Reynolds.

9. On August 23, 2010, Lewis sent Respondent a letter, and again, attached a copy of Rule 5.5 and requested that Respondent advise his client to engage an Idaho attorney.

10. On August 23, 2010, Respondent sent a letter to Lewis by which he stated, among other things, that Lewis would have an opportunity to meet Reynolds's local Idaho counsel at the appropriate time. Respondent ceased representing Reynolds the same day.

11. In early September 2010, Lewis reported Respondent's conduct to the State Bar of California in accordance with his local rules.

12. On May 14, 2011, and on June 1, 2011, an investigator for the State Bar mailed letters to Respondent at his State Bar membership records address requesting a written response to allegations raised by Lewis's complaint. Respondent received both letters, but Respondent did not respond in writing to the investigator's letters or otherwise cooperate during the investigation of Lewis's complaint.

CONCLUSIONS OF LAW

13. By holding himself out to Cincinnati and Lewis as counsel for Reynolds in a claim arising in Idaho and representing Reynolds in settling that claim, Respondent practiced law in a jurisdiction where practicing without being properly licensed in that jurisdiction or otherwise complying with an exception to that rule, is in violation of the regulations of the profession in that jurisdiction in wilful violation of Rules of Professional Conduct, rule 1-300(B).

14. By not providing a written response to the allegations raised by Lewis's complaint, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in wilful violation of Business and Professions Code, section 6068(i).

(2) Case No. 10-O-10249 (The Goddard Matter)

FACTS

15. On February 2, 2010, Jeffery Goddard and Laura Goddard employed Respondent to represent them and their company, The Video Agency ("TVA"), in various pending legal actions.

The MXM Case

16. On February 25, 2010, Respondent filed a substitution of attorney to become counsel for TVA in a matter pending in the Los Angeles County Superior Court entitled *The Video Agency v. MXM, Inc., et al.*, case no. BC429366 ("the MXM case"). Thereafter, Respondent did not appear for the June 29, 2010, case management conference, did not appear for the order to show cause hearing or file proof of service of the MXM case on the defendants.

17. On August 4, 2010, and September 17, 2010, Respondent represented to his client that the defendants in the MXM case had been served and that if the defendants did not file an answer, he would ask the court to convert a case management conference scheduled for September 20, 2010, to a default prove up.

18. In fact, Respondent knew that he had not filed proof of service of the defendants in the MXM case and could not file a request to enter default.

19. On November 3, 2010, the court dismissed the MXM case for failure to appear at a November 3, 2010 hearing. Thereafter, Respondent took no steps to get the dismissal set aside.

The Acotrix Case

20. On February 25, 2010, Respondent filed a substitution of attorney to become counsel for TVA in a matter pending in the Los Angeles County Superior Court entitled *The Video Agency v. Acotrix, Inc., et al.*, case no. BC429405 ("the Acotrix case").

21. Respondent did not appear for a April 26, 2010, case management conference, did not appear for an order to show cause hearing or file proof of service on the defendants in the Acotrix case.

22. On June 11, 2010, the court dismissed the Acotrix case for failure to appear.

Thereafter, Respondent took no steps to get the dismissal set aside.

23. On August 4, 2010, and September 17, 2010, Respondent informed his client that he had dismissed the Acotrix case without prejudice. In fact, Respondent knew or should have known that the court had dismissed the case in June 2011.

The Get Fugu Case

24. On February 26, 2010, Respondent filed a substitution of attorney to become counsel for TVA in a matter pending in the Los Angeles County Superior Court entitled *The Video Agency v. Get Fugu, Inc., et al.*, case no. BC429368 ("the Get Fugu case").

25. Respondent twice attempted to file a request to enter default against defendants in the Get Fugu case, but the court rejected the documents.

26. Respondent did not appear for an August 12, 2010 order to show cause hearing for failure to file a proper request for entry of default, and the court dismissed the Get Fugu case.

27. On August 4, 2010, Respondent informed his client that there was a default hearing set for August 12, 2010, in the Get Fugu case.

28. On September 17, 2010, Respondent informed his client that the default in the Get Fugu case was complete.

29. In fact, Respondent knew that the Get Fugu case had been dismissed.

The Clearvision Case

30. In February 2010, Respondent agreed to represent Jeffrey Goddard and TVA in a matter pending in the Los Angeles County Superior Court entitled *TVA, et al. v. Clearvision, Inc., et al.*, case no. BC429498 ("the Clearvision case"). Respondent failed to file a substitution of attorney and on July 30, 2010, the court dismissed the Clearvision case.

31. On August 4, 2010, and September 17, 2010, Respondent informed his client that he had filed a substitution of attorney and proof of service of the defendant in the Clearvision case.

32. In fact, Respondent knew that he had not filed a substitution or a proof of service in the Clearvision case which had already been dismissed in July 2010.

The Consolidated Pictures Case

33. On February 2, 2010, Respondent agreed to represent Jeffery Goddard, Laura Goddard, and TVA in claims against Consolidated Pictures Group, Inc., ("Consolidated") for repayment of a loan as well as payment of consulting fees owed by Consolidated.

34. On May 21, 2010, Respondent filed a civil action on behalf of the Goddards and TVA entitled *TVA v. Consolidated Pictures Group, Inc., et al.* in the Los Angeles County Superior Court, case no. BC438386 ("Consolidated Pictures case"). Thereafter, Respondent did not accomplish service of the Consolidated Pictures case on the defendants, and Respondent took no further steps to advance the Consolidated Pictures case on behalf of his clients.

35. On August 4, 2010, Respondent informed his client that there was a default hearing scheduled for October 5, 2010, in the Consolidated Pictures case and that he would ask the court to declare the stock which had been provided as security be transferred to Jeffrey Goddard.

36. On September 17, 2010, Respondent informed his client that he had filed a default package with the court and that the October 5, 2010, hearing was for a final judgment and order.

37. In fact, Respondent knew that the hearing scheduled by the court in the Consolidated Pictures case on October 5, 2010, was for an order to show cause hearing re sanctions for failure to appear at a July 2010 hearing and that he had not filed a proof of service or a request for entry of default or a default package.

The Bardes Case

38. On June 7, 2010, Respondent filed a civil action on behalf of TVA entitled *TVA v. Bryan Bardes, et al.* in the Los Angeles County Superior Court, case no. BC439171 ("the Bardes case"). Thereafter, Respondent did not accomplish service of the complaint in the Bardes case on any of the defendants or take any other steps to pursue the Bardes case on behalf of his clients.

39. During the period from April through August 2010, TVA paid Respondent a total of \$12,500 in attorney fees for legal services. Respondent did not refund any portion of the \$12,500 received from TVA for funds that were earned.

40. In October 2010, Goddard made a complaint to the State Bar about Respondent's conduct.

41. On May 14, 2011, and June 1, 2011, an investigator for the State Bar mailed letters to Respondent at his State Bar membership records address requesting a written response to allegations raised by Goddard's complaint. Respondent received the letters, but did not respond in writing to the investigator's letters or otherwise cooperate during the investigation of Goddard's complaint.

CONCLUSIONS OF LAW

42. By not taking action to prosecute the various matters filed on behalf of TVA and causing them to be dismissed for failure to appear and prosecute, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

43. By making multiple misrepresentations to Jeffrey Goddard and TVA about the status of the various matters he was hired to handle for them, Respondent committed acts involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code, section 6106.

44. By not refunding fees received from TVA that had not been earned, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in wilful violation of Professional Conduct, rule 3-700(D)(2).

45. By not providing a written response to the allegations raised by Goddard's complaint, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in wilful violation of Business and Professions Code, section 6068(i),

(3) Case No. 10-O-10250 (The Nixon Matter)

FACTS

46. In October 2006, Elton Nixon ("Nixon") employed Respondent to represent him in a quiet title action and paid Respondent \$15,000 in advanced fees. Shortly thereafter, Nixon

employed Respondent to represent him in collecting on loans he had made to Frank Campos in 2005 and 2006. Nixon gave Respondent documents relating to these matters. Nixon paid Respondent an additional \$10,000 in advanced fees on November 15, 2006.

47. Respondent did not complete work regarding the Frank Campos matter and Respondent did not provide services of value to Nixon regarding the quiet title action.

48. On April 16, 2008, Respondent filed a civil action to quiet title against the United States and others entitled *Elton, Inc., et al., v. Kempthorne, et al.*, in the U.S. District Court, case no. ED-CV 08-00520 ("Elton action"). Thereafter, Respondent did not file any proofs of service on defendants in the Elton action.

49. On August 26, 2009, the court in the Elton action dismissed the Elton action without prejudice for lack of prosecution and for failure to comply with orders of the court regarding the electronic filing of proofs of service on defendants. Respondent received a copy of the order of dismissal.

50. During the months from May 2008 through December 2009, Respondent made multiple misrepresentations to Nixon regarding the status of the Elton action. In fact, Respondent knew that the court had dismissed the Elton action in August 2009 for failure to prosecute.

51. On December 3, 2009, Respondent filed a second complaint to quiet title on behalf of Elton in the U.S. District Court, case no. ED-CV 09-2219 ("Elton II action"). Thereafter, Respondent did not file any proofs of service of the Elton II action on the defendants.

52. In May 2007, Respondent informed Nixon that Chicago Title had agreed to provide a title policy for the property which was the subject of Nixon's quiet title claim. In fact, Respondent knew that Chicago Title had not agreed to provide a title policy to the property in question.

53. On January 16, 2010, Respondent informed his client that he had obtained a quiet title in the Elton II action and would get a copy when the court opened on Tuesday. In fact, Respondent knew that there was no court order to quiet title.

54. In the month of June 2010, Respondent did not respond to calls from Nixon seeking to know the status of his legal matters. Therefore, Nixon employed Jae H. Kim ("Kim") to take over his representation from Respondent.

55. On June 18, 2010, and again on July 23, 2010, Kim mailed letters to Respondent informing him that Nixon had hired Kim to substitute in place of Respondent and requesting that Respondent release Nixon's client file to Kim. Respondent received the letters.

56. At no time did Respondent release Nixon's client file to Kim or to Elton.

57. Respondent did not provide services of value to earn the \$25,000 received from Nixon. Respondent has not refunded any of the \$25,000 received from Nixon.

58. In October 2010, Nixon made a complaint to the State Bar about Respondent's conduct.

59. On May 21, 2011, June 4, 2011, an investigator for the State Bar mailed letters to Respondent at his State Bar membership records address requesting a written response to allegations raised by Nixon's complaint. Respondent received the letters.

60. Respondent did not respond in writing to the investigator's letters or otherwise cooperate during the investigation of Nixon's complaint.

CONCLUSIONS OF LAW

61. By failing to prosecute the Elton action and the Elton II action as well as pursue Nixon's claims against Frank Campos and the claims regarding the trust deeds, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

62. By making repeated misrepresentations to his client regarding the status of the Elton action, Respondent committed an act involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code, section 6106.

63. By not releasing Nixon's client file to Nixon's new counsel, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all

the client papers and property in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

64. By not refunding the unearned fees received from Nixon upon termination of his employment, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

65. By not providing a written response to the allegations raised by Nixon's complaint, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in wilful violation of Business and Professions Code, section 6068(i).

(4) Case No. 11-O-11516 (The Learmont Matter)

FACTS

66. On November 9, 2008, Henry S. Learmont ("Learmont") employed Respondent to represent him in a claim against Toyobo Company Ltd. ("Toyobo") arising from defective merchandise. On November 11, 2008, Learmont paid Respondent \$2,500 in fees. Thereafter, Respondent did not take action on behalf of Learmont to assert his claim against Toyobo.

67. On the contrary, from September 2009, through June 2010, Respondent informed Learmont that there were ongoing settlement discussions and represented that a settlement had been reached. Respondent knew that Toyobo had not agreed to any payment to settle Learmont's claims because Respondent never contacted Toyobo on behalf of Learmont.

68. In November 2010, Learmont contacted Toyobo and learned that Respondent had never contacted Toyobo regarding Learmont's claim.

69. Respondent did not provide services of value to earn the \$2,500 received from Learmont, and at no time did Respondent refund any of the \$2,500 retainer to Learmont.

70. In February 2011, Learmont made a complaint to the State Bar about Respondent's conduct.

71. On April 7, 2011, and April 28, 2011, an investigator for the State Bar mailed letters to Respondent at his State Bar membership records address requesting a written response to

allegations raised by Learmont's complaint. Respondent received the letters, but Respondent did not respond in writing to the investigator's letters or otherwise cooperate during the investigation.

CONCLUSIONS OF LAW

72. By not taking action to pursue Learmont's claims against Toyobo or otherwise advise Learmont about his claims, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

73. By misrepresenting to Learmont that Toyobo had agreed to a settlement of Learmont's claims, Respondent committed an act involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code, section 6106.

74. By not refunding the \$2,500 retainer to Learmont after he failed to make himself available to handle Learmont's case, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

75. By not providing a written response to the allegations raised by Learmont's complaint, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in wilful violation of Business and Professions Code, section 6068(i).

(5) Case No. 11-O-15197 (The Oscar Matter) - INVESTIGATION

FACTS

76. On April 14, 2004, GH Prestidge ("GH") filed a complaint in a breach of contract matter against Oscar Home Care, Inc. ("Oscar") in a matter entitled *GH Prestidge v. Oscar Home Care, Inc.*, case no. RCVRS079860, San Bernardino Superior Court. Oscar hired Respondent to represent them in the GH lawsuit.

77. Thereafter, Respondent failed to respond to GH's discovery requests which resulted in motions to compel discovery and discovery sanctions. On August 31, 2006, the court granted

GH's motion to strike Oscar's answer on the grounds that Oscar failed to attend a mandatory settlement conference and comply with discovery requests, and on January 5, 2007, the court entered a default judgment in the amount of \$352,878 in favor of GH.

78. On October 27, 2009, Oscar retained attorney Henry Hsieh and filed a substitution of attorney, substituting Respondent off the GH matter.

CONCLUSIONS OF LAW

79. By failing to make appearances and failing to appear at a mandatory settlement conference, failing to comply with discovery requests, failing to adequately defend Oscar and by not taking action to avoid the default judgment, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

DISMISSALS

The parties respectfully request the Court dismiss three alleged violations from the NDCs in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
10-O-10249	Four	Business and Professions Code section 6068(m)
10-O-10249	Six	Rules of Professional Conduct, rule 4-100(B)(3)
10-O-10250	Twelve	Rules of Professional Conduct, rule 4-100(B)(3)

SUPPORTING AUTHORITY

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

The Standards for Attorney Sanctions for Professional Misconduct, Rules Proc. Of State Bar, Title IV, provide for suspension to disbarment where an attorney engaged in acts constituting moral turpitude, a pattern of failing to perform, and an attorney who has one prior record of discipline. (Standards 1.6(a), 1.7(a), 2.3, & 2.4(a).)

The standards are guidelines (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628) and are afforded great weight (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92) and are not applied in a talismanic fashion (*In the*

Matter of Van Sickle (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994). A determination of discipline balances the standards with mitigation and aggravation. (Std. 1.6(b); *Segal v. State Bar* (1988) 44 Cal.3d 1077, 1089; *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-11.)

In *Olguin v. State Bar* (1980) 28 Cal.3d 195, an attorney was disciplined for 6 months actual suspension with probation and stayed suspension of 18 months. The court held that the attorney's dereliction of duty to his client and deceptive conduct in making false representations in trying to avoid capability for abandoning his client warranted actual suspension. The attorney in *Olguin* had a prior reproval.

In *Farnham v. State Bar* (1976) 17 Cal.3d 605, an attorney was disciplined for 6 months actual suspension with probation and stayed suspension of two years. The attorney abandoned the interest of two clients, held himself out as entitled to practice law while on actual suspension arising from a prior discipline.

In *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73, an attorney was disciplined for a three-year stayed suspension, a three-year probation period and one-year of actual suspension where he abandoned three separate client matters, the misconduct spanned a lengthy time period and included extensive deceit, there was substantial harm, and the attorney failed to cooperate with the State Bar investigations.

In the present matter the unauthorized practice in Idaho is less egregious than the misconduct in *Farnham*. However, the present misconduct involves 3 clients that were abandoned, 1 pro bono client matter that constituted a technical unauthorized practice of law in another jurisdiction, and 1 client matter where Respondent failed to perform adequately. Therefore greater discipline than that in *Olguin* or *Peterson* is appropriate.

Here, a two-year actual suspension with a standard 1.4(c)(ii) rehabilitation hearing is sufficient to protect the public.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was September 13, 2011.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of September 13, 2011, the estimated prosecution costs in this matter are approximately \$8,755. Respondent acknowledges that this is an estimate and that additional State Bar Court costs may be included in any final cost assessment (see Bus. & Prof. Code section 6068.10(c)) or taxable costs (see C.C.P. section 1033.5(a)). Should this stipulation be rejected or relief from the stipulation be granted, the costs in this matter may increase due to further proceedings.

Respondent must pay installment of disciplinary costs within the time provided or as may be modified by the State Bar Court pursuant to section 6086.10, subdivision (c); also see Rules of Procedure of the State Bar of California (Rules Proc. of State Bar, rule 5.134 (old rule 286) and Business and Professions Code section 6140.7 money judgments).

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In the Matter of: Gregory S. Emerson	Case Number(s): 10-O-09442 10-O-10249 10-O-10250 11-O-11516 - PEM 11-O-15197 (INV)
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Medical Conditions

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

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

- c. ☒ Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

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In the Matter of: Gregory S. Emerson	Case Number(s): 10-O-09442 10-O-10249 10-O-10250 11-O-11516 - PEM 11-O-15197 (INV)
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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
Elton Nixon	\$25,000	October 29, 2006
Henry Learmont	\$2,500	November 11, 2008
Oscar Home Care, Inc.	\$59,484.10	August 25, 2009

- ☒ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than THIRTY (30) DAYS BEFORE THE TERMINATION OF THE PROBATION PERIOD HEREIN.
- ☒ Respondent must offer binding fee arbitration to Jeffery Goddard and/or Laura Goddard in the manner set forth below:

A. Duty to Notify Individuals of Right to Mandatory Fee Arbitration

No later than thirty (30) days after the effective date of discipline, Respondent agrees to send a letter by certified mail, return receipt requested, to the individuals set forth below and agrees to therein offer to initiate, pay any costs and fees associated with the fee arbitration, and participate in binding fee arbitration with said individuals, upon the request of any such individuals, regarding fees respondent received for representation of the former clients set forth below, unless respondent has previously sent such a written offer to said individuals. The letter shall include the address and phone number of the Office of Probation along with a statement that the Office of Probation will be monitoring his fee arbitration conditions and may be contacted by the individual.

Respondent must offer Jeffery Goddard and/or Laura Goddard the option of participating in binding fee arbitration for the remaining \$12,500 in fees he paid respondent.

B. Upon Individual's Consent to Mandatory Fee Arbitration, Duty to Initiate Fee Arbitration

Within forty (40) days after the effective date of discipline, respondent agrees to provide the Office of Probation with a copy of the letters offering to initiate and participate in fee arbitration with the individuals set forth above, along with a copy of the return receipt from the U.S. Postal Service, or other proof of mailing.

Respondent agrees to advise the Office of Probation, in writing, of any request to participate in fee arbitration made by any individual set forth above within fifteen (15) days after any such request. Respondent agrees to provide the Office of Probation with any information requested to verify Respondent's compliance, including submission of any written request for fee arbitration or the submission of a declaration from any individual setting forth the date arbitration was requested.

Respondent agrees to initiate fee arbitration within fourteen (14) days of any request, including making any payment required by the organization conducting the fee arbitration. Respondent agrees to fully and promptly participate in the fee arbitration as directed by the organization conducting the fee arbitration. Respondent will not be permitted to raise the statute of limitations as a defense to the fee arbitration with respect to any of the above individuals.

Respondent further agrees to accept binding arbitration on the arbitration request form. If the arbitration proceeds as non-binding, however, Respondent hereby agrees to abide by the arbitration award and foregoes the right to file an action seeking a trial de novo in court to vacate the award.

C. Duty to Comply with the Arbitration Award

Within thirty (30) days after issuance of any arbitration award or judgment or agreement reflected in a stipulated award issued pursuant to a fee arbitration matter, Respondent agrees to provide a copy of said award, judgment or stipulated award to the Office of Probation.

Respondent agrees to abide by any award, judgment or stipulated award of any such fee arbitrator and agrees to provide proof thereof to the Office of Probation within thirty (30) days after compliance with any such award, judgment or stipulated award. If the award, judgment or stipulated award does not set forth a deadline for any payment, Respondent is to make full payment within thirty (30) days of the issuance of any such award, judgment or stipulated award.

To the extent that respondent has paid any fee arbitration award, judgment or stipulated award prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payment(s) provided satisfactory proof of such payment(s) is or has been shown to the Office of Probation.

D. Obligation to Pay Restitution to the Client Security Fund.

If the State Bar Client Security Fund has reimbursed any of the above individuals for all or any portion of any award, judgment or stipulated award pursuant to fee arbitration, respondent agrees to pay restitution to the Client Security Fund of the amount paid, plus applicable interest and costs, in accordance with Business and Professions Code section 6140.5. To the extent the Client Security Fund has paid only principal

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amounts, respondent will still be liable for interest payments to such individuals. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

E. Effect of Failure to Comply with Fee Arbitration Conditions

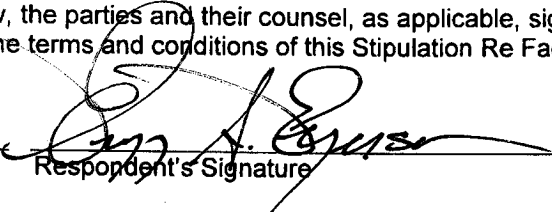
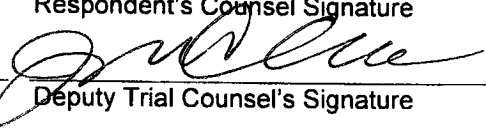
Respondent understands that failure to strictly comply with these conditions regarding fee arbitration may result in this Court ordering Respondent to pay back the full amount of attorneys' fees paid to Respondent by each of the individuals listed plus 10% interest from the date Respondent received the fees.

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In the Matter of: Gregory S. Emerson	Case number(s): 10-O-09442 10-O-10249 10-O-10250 11-O-11516 - PEM 11-O-15197 (INV)
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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>9/23/11</u> Date	 Respondent's Signature	<u>Gregory S. Emerson</u> Print Name
<u>9/23/2011</u> Date	 Respondent's Counsel Signature	<u>N/A</u> Print Name
		<u>Jean Cha</u> Print Name

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In the Matter of: Gregory S. Emerson	Case Number(s): 10-O-09442 10-O-10249 10-O-10250 11-O-11516 - PEM 11-O-15197 (INV)
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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.

PAGE 2 - B.(1)(4). INSERT "UNTIL" BEFORE "RESTITUTION".

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

10-05-11

Judge of the State Bar Court

RICHARD A. PLATEL

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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 October 6, 2011, I deposited a true copy of the following document(s):

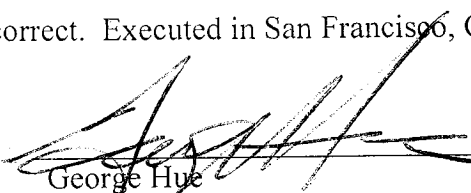
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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:
- GREGORY S. EMERSON
LAW OFC GREGORY S EMERSON
1055 WILSHIRE BLVD STE 1996
LOS ANGELES, CA 90017
- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- ☐ by overnight mail at , California, addressed as follows:
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.
- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Jean Cha, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 6, 2011.


George Hue
Case Administrator
State Bar Court