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**State Bar Court of California
Hearing Department
Los Angeles
DISBARMENT**

<p>Counsel For The State Bar</p> <p>Alexander M. Dai Deputy Trial Counsel 1149 S. Hill St. Los Angeles, CA 90015 Telephone: (213) 765-1162</p> <p>Bar # 83267</p>	<p>Case Number(s): 11-O-12742-DFM, 11-O-12803; Investigation Case Nos. 11-O-13717, 11-O-14809</p>	<p>For Court use only</p> <p align="center">FILED DEC 20 2011 <i>JK</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p align="center">PUBLIC MATTER</p>
<p>In Pro Per Respondent</p> <p>Henry Richard Gaxiola 8556 Nuevo Avenue Fontana, CA 92335 Telephone: (909) 356-9596</p> <p>Bar # 138498</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p>DISBARMENT</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: Henry Richard Gaxiola</p> <p>Bar # 138498</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 12/7/1988.
- (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 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."

(Effective January 1, 2011)



- (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):
- Costs to be awarded to the State Bar.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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**
- (a) State Bar Court case # of prior case 04-O-14951
 - (b) Date prior discipline effective 6/30/06
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rule 3-110(A)
 - (d) Degree of prior discipline Private Reproval
 - (e) If respondent has two or more incidents of prior discipline, use space provided below:

State Bar Case # 09-O-15770, 10-O-03743 (inv)
Discipline effective 8/21/11; Degree of discipline: one year stayed suspension, 2 years of probation with conditions.
Rules of Professional Conduct/State Bar Act violations: Rules 3-110(A), 3-700(D)(1), 3-700(D)(2), Bus. & Prof. Code sections 6068(m), 6068(i)
- (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. To date, Respondent has failed to refund \$2,500 in unearned fees to Alfred Harris. Respondent's

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misconduct prevented Zoila Lara from obtaining the benefit of the court's finding in her favor in the amount of \$12,000. Respondent misappropriated significant funds from both Elisa Garcia and the parties in the Cruz dissolution matter, and as a result, they unnecessarily lost the use of their funds over lengthy periods of time.

- (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.
- (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.

(Effective January 1, 2011)

Disbarment

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- (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:

Respondent was exceedingly cooperative in resolving this matter and is entitled to mitigation credit for entering into this comprehensive stipulation, which eliminated the necessity of filing additional charges regarding Investigation case numbers 11-O-13717 and 11-O-14809 and eliminated the necessity for trial of all four matters included in this stipulation.

D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **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.
- (2) **Restitution:** Respondent must make restitution to Alfred Harris in the amount of \$ 2,500 plus 10 percent interest per year from August 31, 2009. If the Client Security Fund has reimbursed Alfred Harris for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than 60 days from the effective date of the Supreme Court order in this case.
- (3) **Other:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

In the Matter of : Henry Richard Gaxiola

Case Numbers: 11-O-12742-DFM, 11-O-12803; and
Investigation Case Nos. 11-O-13717, 11-O-14809

FACTS AND CONCLUSIONS OF LAW

Respondent admits that the following facts are true and that he is culpable of violations of the specified Rules of Professional Conduct and Business and Professions Code sections.

Case No. 11-O-12742 (Complainant Alfred Harris)

FACTS:

1. On or about August 31, 2009, Alfred Harris ("Harris") employed Respondent to represent him in seeking to set aside a default entered against Harris in or about 1998 by the Orange County Superior Court in the matter entitled *Terry M. Moshenko, a Professional Law Corp. v. Harris*, case no. 98HL05824 ("Moshenko case"). At that time, Harris paid Respondent \$2,500 in advanced fees for his legal services.

2. At no time did Respondent file a motion to set aside Harris's default in the Moshenko case or otherwise advise Harris on some other course of action. Between October 2009 and April 2010, Harris's daughter, Brandi Harris, contacted Respondent regarding the Moshenko case, and Respondent assured Brandi Harris that he would file a motion to set aside Harris's default.

3. In or about March 2011, Harris employed new counsel to represent him. On March 18, 2011, attorney Sheba Saroi Yaqoot mailed a letter to Respondent informing him that Harris had employed her firm for representation in the Moshenko case and requesting that he release the client file. Respondent received the letter. However, at no time did Respondent release Harris's client file to Yaqoot or to Harris or inform them how they may receive the file.

4. Respondent did not provide any services of value to Harris. Respondent did not earn any of the \$2,500 in fees advanced by Harris. However, Respondent did not refund any unearned fees to Harris.

CONCLUSIONS OF LAW:

1. By not filing a motion to set aside Harris's default or otherwise advising him regarding his legal options, Respondent intentionally, recklessly, or repeatedly failed to perform legal services competently, in willful violation of rule 3-110-(A) of the Rules of Professional Conduct.

2. By not releasing the client file to Harris or to Harris's new counsel upon request, Respondent failed to release promptly, upon termination of employment, all client papers and property, in willful violation of rule 3-700(D)(1) of the Rules of Professional Conduct.

3. By not refunding any of the \$2,500 in unearned fees to Harris upon termination of his employment, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Case No. 11-O-12803 (Complainant Zoila Lara)

FACTS:

1. Respondent represented Zoila Lara ("Lara") in a court trial in the matter entitled *Lara v. Ruvalcaba, et al.*, in San Bernardino County Superior Court case number CIVSS702836. On February 11, 2009, the court found in favor of Lara and Andres Lara against defendant Yesenia Ruvalcaba ("Ruvalcaba") in the sum of \$12,000. At that time, while Respondent was present in court, the court requested that Respondent prepare the statement of decision within 30 days and that the defendant respond within 20 days of filing of the proposed statement of decision. Thereafter, Respondent did not prepare a statement of decision on behalf of Lara within 30 days as requested by the court.

2. On March 23, 2009, Donald E. Faubus ("Faubus"), counsel for Ruvalcaba, mailed a letter to Respondent reminding Respondent that the court had requested Respondent to prepare the statement of decision. Respondent received Faubus's letter. However, Respondent did not respond to the letter or submit a draft statement of decision.

3. On July 2, 2009, Faubus sent a letter to Respondent by facsimile offering to settle Ruvalcaba's liability in full for a payment of \$6,000 and a dismissal of the action without a judgment. Respondent received Faubus's letter but did not respond. Respondent did not promptly communicate the settlement offer to Lara in writing or otherwise.

4. On July 22, 2009, Faubus sent a letter to Respondent by facsimile offering on behalf of Ruvalcaba to settle her liability for a total payment of \$9,000 paid in installments over 24 months. Respondent received the letter but did not respond. Respondent did not promptly communicate the settlement offer to Lara in writing or otherwise.

5. On November 5, 2010, Respondent mailed a letter to Faubus enclosing a draft statement of decision for his review. Faubus received the letter and responded by mailing a letter to Respondent on November 12, 2010, stating that the delay in preparing the statement of decision was grounds for a mistrial and pointing out errors in the proposed statement of decision. On November 17, 2010, Faubus also mailed to Respondent a transcript of the trial in the Ruvalcaba case. Respondent received both letters from Faubus and contacted Faubus to request a settlement offer from Faubus.

6. On November 30, 2011, Faubus mailed a letter to Respondent offering on behalf of Ruvalcaba to settle the Ruvalcaba case for payment of \$5,000 in monthly payments of \$500. Respondent received the letter.

7. Beginning in or about April 2009 through November 2010, Lara and Mary Baez ("Baez"), a friend of Lara, telephoned Respondent's office repeatedly seeking to learn the status of Lara's case. Baez assisted Lara because Lara speaks limited English. During this time, they were unable to speak directly to Respondent or make an appointment to meet with him until in or about December 2010. In or about December 2010, Respondent met with Lara and Baez and informed them that there was an offer to settle from Ruvalcaba. Lara requested that Respondent provide her with the terms of the offer in writing so that she could consider it, and Respondent agreed to do so. Thereafter, Respondent did not provide the terms of the offer in writing to Lara for her consideration.

8. On January 25, 2011, Faubus mailed a letter to Respondent requesting a response to the settlement offer. Respondent received the letter but did not respond.

9. During the period from January 2011 and thereafter, Baez telephoned Respondent's office on behalf of Lara repeatedly, leaving messages for Respondent to return her calls. Respondent received Baez's calls on behalf of Lara but did not respond.

CONCLUSIONS OF LAW:

1. By not preparing the statement of decision to obtain a final judgment for Lara or otherwise completing a settlement of the case, Respondent intentionally, recklessly or repeatedly failed to perform legal services competently, in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

2. By not promptly informing Lara of the written settlement offers from Ruvalcaba in July 2009, Respondent failed to communicate promptly to a client all amounts, terms, and conditions of any written offer of settlement made to the client, in willful violation of rule 3-510 of the Rules of Professional Conduct.

3. By not responding to telephone calls from Lara and from Baez on behalf of Lara inquiring into the status of Lara's case, Respondent failed to promptly respond to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

Investigation Case No. 11-O-13717 (Complainant Maria Madrid)

FACTS:

1. On October 1, 2007, Maria Madrid hired Respondent to represent her sister, Elisa Garcia ("Garcia"), a paraplegic, in a lawsuit for assault against an adult daycare facility. The retainer agreement provided that after deducting his attorney fees from a verdict or settlement, Respondent would place the remainder into a Special Needs Trust for Garcia.

2. The lawsuit settled for a total of \$175,000 in November 2008. The funds were deposited into Respondent's Bank of America Client Trust Account ("CTA") on December 12, 2008 (\$75,000) and December 5, 2008 (\$100,000). According to the accounting provided by Respondent, Respondent was to receive \$77,500 in fees and costs, and the balance of \$97,500 was to be placed into a Special Needs Trust for Garcia.

3. Respondent failed to set up a Special Needs Trust for Garcia, and instead left the funds in his CTA. Bank records for the CTA reveal that the following payments totaling \$45,923.76 were made on behalf of Garcia from the CTA:

- a. \$3,000 to Maria Madrid on 12-24-08
- b. \$33,823.76 to West Covina Toyota on 12/29/08
- c. \$1,900 to EDL Investigations on 01-07-09
- d. \$3,700 to Maria Madrid on 01-22-09
- e. \$1,500 to Maria Madrid on 07-16-09
- f. \$2,000 to Maria Madrid on 10-19-09

4. After issuing the above payments, Respondent should have maintained \$51,576.24 in his CTA on behalf of Garcia (\$97,500 less \$45,923.76). However, from December 12, 2008 through February 10, 2011, bank records for the CTA reveal that Respondent withdrew monies, paid third party loan processing fees, paid other clients judgments and settlements and otherwise used Garcia's funds for his own use and purposes. By July 15, 2009, the balance in Respondent's CTA had dropped to \$12,126.85. By February 10, 2011, the balance in Respondent's CTA had dropped to \$8,876.85.

5. A conservatorship was set up for Garcia in Los Angeles Superior Court (Case No. KP012755). In April, 2011, Respondent was ordered to pay the balance of Garcia's funds to court-appointed probate attorney (PVP), Patricia Lobello. The accounting Respondent provided at the time revealed that he should have been holding \$53,076.24 in his CTA for Garcia.

6. On April 21, 2011, Respondent deposited into his CTA two Wells Fargo Bank cashiers' checks for \$30,000 and \$39,000, respectively, representing Respondent's personal funds. From these funds, Respondent issued a CTA check to pay out the balance of the funds he owed to Garcia. On April 26, 2011, Respondent's check payable to "Lamb, Morris & Lobello Client Trust Account" in the amount of \$53,076.24 was paid against the CTA.

CONCLUSIONS OF LAW:

1. By failing to maintain a balance of at least \$51,764.24 (\$97,500 less \$45,923.76) in his CTA on behalf of Garcia, Respondent failed to maintain funds received or held for the benefit of a client in a client trust account, in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

2. By misappropriating for his own use and purposes at least \$42,699.39 (\$51,764.24 less \$8,876.85) of the funds that he was required to maintain in the CTA on behalf of Garcia, Respondent committed an act or acts of moral turpitude, in willful violation of Business and Professions Code section 6106.

3. By depositing into his CTA the two Wells Fargo Bank cashier's checks totaling \$69,000 and representing Respondent's personal funds, Respondent commingled personal funds in a client trust account, in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

Investigation Case No. 11 O 14809 (Complainant Adelaide Cruz-Hernandez)

FACTS:

1. Respondent represented Adelaide Cruz-Hernandez' ("Hernandez") ex-husband, Cipriano Cruz, in a marital dissolution case (*In Re the Marriage of Cruz*, San Bernardino County Superior Court case number SBFSS096810). As part of the parties' marital settlement agreement, the court ordered the sale of their home in mid 2007. The proceeds of the sale of the family home were divided between Respondent and Hernandez' attorney to be held in trust until further order of the court. Respondent received approximately \$40,000 of the proceeds of the sale of the family home to hold in trust.

2. Respondent deposited the proceeds of the sale of the family home into his Client Trust Account at Bank of America (CTA). Thereafter, it appears that some distributions may have been made from the CTA as ordered by the court. After those distributions, Respondent was required to maintain at least \$23,921 of the funds in the CTA on behalf of the parties in the dissolution matter. However, Respondent misappropriated the entire \$23,921 for his own use and purposes.

3. The court in the dissolution matter eventually ordered Respondent to make an equalization payment from his CTA to Hernandez in the amount of \$20,000 and ordered Respondent to make a payment from his CTA to Hernandez's attorney, Alejandro Murguia ("Murguia"), for attorney's fees in the amount of \$3,921. However, because he had misappropriated the funds, Respondent failed to pay out the funds to Hernandez and Murguia as ordered by the court. It was not until after various orders to show cause re contempt were issued against Respondent for failure to comply with the court's orders that he finally made the payments. On or about November 18, 2010 and December 17, 2010, Respondent paid Hernandez the \$20,000 equalization payment in two cashier's checks for \$10,000 each. On or about November 7, 2011, Respondent made the final payment to Murguia.

CONCLUSIONS OF LAW:

1. By failing to maintain a balance of \$23,921 in his CTA on behalf of the parties to the dissolution matter, Respondent failed to maintain funds received or held for the benefit of a client or others in a client trust account, in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

2. By misappropriating for his own use and purposes the \$23,921 that he was required to maintain in trust for the parties to the dissolution matter, Respondent committed an act or acts of moral turpitude, in willful violation of Business and Professions Code section 6106.

3. By failing to promptly pay the equalization payment in the amount of \$20,000 to Hernandez and the attorney fee payment in the amount of \$3,921 to Murguia as ordered by the court, Respondent wilfully disobeyed an order of the court requiring him to do an act connected with or in the course of his profession which he ought in good faith to do, in violation of Business and Professions Code section 6103.

AUTHORITIES SUPPORTING DISCIPLINE

STANDARDS FOR ATTORNEY SANCTIONS

To determine the appropriate level of discipline, the standards provide guidance. *Drociak v. State Bar* (1991) 52 Cal.3d 1085; *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119. A disciplinary recommendation must be consistent with the discipline in similar proceedings. See *Snyder v. State Bar* (1990) 49 Cal.3d 1302. Also, the recommended discipline must rest upon a balanced consideration of relevant factors. *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119.

Pursuant to Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.

Pursuant to Standard 1.6 of the Standards for Attorney Sanctions for Professional Misconduct:

(a) The appropriate sanction for an act of professional misconduct shall be that set forth in the following standards for the particular act of misconduct found or acknowledged. If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable standards.

(b) The appropriate sanction shall be the sanction imposed unless:

(i) Aggravating circumstances are found to surround the particular act of misconduct found or acknowledged and the net effect of those aggravating circumstances, by themselves and in balance with any mitigating circumstances found, demonstrates that a greater degree of sanction is required to fulfill the purposes of imposing sanctions set forth in standard 1.3. In that case, a greater degree of discipline than the appropriate sanction shall be imposed or recommended.

Pursuant to Standard 1.7(b) of the Standards for Attorney Sanctions for Professional Misconduct:

(b) If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a prior record of two prior impositions of discipline . . . the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

Pursuant to Standard 2.2(a) of the Standards for Attorney Sanctions for Professional Misconduct:

(a) Culpability of a member of willful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property 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.

Pursuant to Standard 2.3 of the Standards for Attorney Sanctions for Professional Misconduct:

Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

Pursuant to Standard 2.4 of the Standards for Attorney Sanctions for Professional Misconduct:

(a) Culpability of a member of a pattern of willfully failing to perform services demonstrating the member's abandonment of the causes in which he or she was retained shall result in disbarment.

Pursuant to Standard 2.6 of the Standards for Attorney Sanctions for Professional Misconduct:

Culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

(a) Sections 6067 and 6068;

(b) Sections 6103 through 6105 . . .

Pursuant to Standard 2.10 of the Standards for Attorney Sanctions for Professional Misconduct:

Culpability of a member ... of a willful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3

In this matter, the key operative standards are 1.7(b) and 2.2(a), both of which call for disbarment. This matter represents Respondent's third imposition of discipline as Respondent has two prior impositions of discipline. Further, there is no evidence of any compelling mitigation that clearly predominates in this matter. The only mitigation is Respondent's cooperation with the State Bar in resolving this matter. Accordingly, pursuant to standard 1.7(b), disbarment is warranted.

Further, Respondent misappropriated \$66,620.39 in multiple acts of wrongdoing in two separate client matters. The amount misappropriated was not insignificantly small. Accordingly, pursuant to standard 2.2(a), disbarment is warranted. Additionally, disciplinary case law provides that disbarment is the usual sanction for significant misappropriations. In this case, there is no compelling mitigation, and therefore discipline less than disbarment would not be appropriate. *Chang v. State Bar* (1989) 49 Cal.3d 114; *Kelly v. State Bar* (1988) 45 Cal.3d 649; *Rimel v. State Bar* (1983) 34 Cal.3d 128.

Finally, considering both of Respondent's priors, coupled with the current misconduct, Respondent has engaged in repeated acts of failing to perform legal services with competence in multiple client matters. Disbarment is warranted for repeated violations of Rules of Professional Conduct 3-110(A). *In re Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416; *Cannon v. State Bar* (1990) 51 Cal.3d 1103; standard 2.4.

Pursuant to standard 1.3, disbarment is the appropriate sanction in this matter to protect the public, courts and legal profession, to maintain high professional standards, and to preserve public confidence in the legal profession.

FURTHER AGREEMENTS OF THE PARTIES

The factual statements contained in this Stipulation constitute admissions of fact and may not be withdrawn by either party, except with court approval.

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties waive any variance between the Notice of Disciplinary Charges filed on October 17, 2011, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of a Notice of Disciplinary Charges with respect to the investigation matters included in this stipulation. Finally, the parties waive the right to a formal hearing on

any charges included in the pending Notice of Disciplinary Charges and on any charges herein.

PENDING PROCEEDINGS:

The disclosure date referred to on page two, paragraph A.(7), is November 22, 2011.

COSTS OF DISCIPLINARY PROCEEDINGS

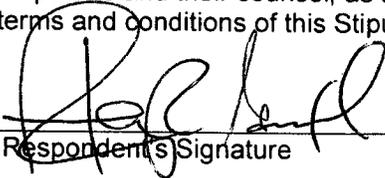
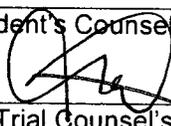
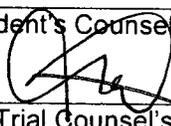
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 22, 2011, the prosecution costs in this matter are an estimated \$5,129. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings

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In the Matter of: Henry Richard Gaxiola Bar No. 138498	Case number(s): 11-O-13717-DFM and 11-O-12803; Investigation case numbers 11-O-14809 and 11-O-13717
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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>11-30-11</u> Date	 Respondent's Signature	<u>Henry R. Gaxiola</u> Print Name
<u>12/6/11</u> Date	 Respondent's Counsel Signature	<u>Alexander M. Dai</u> Print Name
<u>12/6/11</u> Date	 Deputy Trial Counsel's Signature	<u>Alexander M. Dai</u> Print Name

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In the Matter of: Henry Richard Gaxiola Bar No. 138498	Case Number(s): 11-O- 12742 DFM and 11-O-12803; Investigation case nos. 11-O-14809, 11-O-13717
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DISBARMENT 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.)**

Respondent Henry Richard Gaxiola is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

12/19/11
Date


DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. Of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 20, 2011, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

**HENRY R. GAXIOLA
8556 NUEVO AVE
FONTANA, CA 92335**

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

ALEXANDER M. DAI, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 20, 2011.



Tammy Cleaver
Case Administrator
State Bar Court