

(Do not write above this line.)

State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
<p>Counsel For The State Bar</p> <p>Robin Brune Senior Trial Counsel 180 Howard Street San Francisco, California 94105</p> <p>Bar # 149481</p>	<p>Case Number(s): 11-O-14511;12-O-10415</p>	<p>For Court use only</p> <p style="text-align: center;">PUBLIC MATTER</p> <p style="text-align: center;">FILED APR 19 2012</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Richard Gibson, Jr. 2027 Grand Canal Blvd., Suite 35 Stockton, California 95207</p> <p>Bar # 84099</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: Marc Bourget</p> <p>Bar # 91848</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 June 2, 1980.
- (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 18 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."

(Do not write above this line.)

- (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. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See attachment.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(Do not write above this line.)

- (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. Respondent was involved in litigation with family members.
- (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.

(Do not write above this line.)

- (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:

See attachment for other factors taken into consideration.

D. Discipline:

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

(2) **Probation:**

Respondent must be placed on probation for a period of two years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of sixty 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.

(Do not write above this line.)

- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

No Ethics School recommended. Reason: .

- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
 - Substance Abuse Conditions
 - Law Office Management Conditions
 - Medical Conditions
 - Financial Conditions

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without**

(Do not write above this line.)

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:**

(Do not write above this line.)

In the Matter of: Marc Bourget	Case Number(s): 11-O-14511;12-O-10415
-----------------------------------	--

Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

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

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

- 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
 - a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

(Do not write above this line.)

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. **Client Trust Accounting School**

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

(Do not write above this line.)

In the Matter of:	Case Number(s): 11-O-14511;12-O-10415
-------------------	--

Law Office Management Conditions

- a. Within 90 days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.

- b. Within days/ months/ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)

- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

Other:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Marc Bourget
CASE NUMBER(S): 11-O-14511; 12-O-14511

FACTS AND CONCLUSIONS OF LAW:

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 11-O-14511 (Brown/Abarca)

FACTS:

1. Beginning in 2005, respondent was hired by Harold Joe Ferber to represent him in a civil matter entitled *Socorro Abarca v. Harold Joe Ferber*, San Joaquin Superior Court Case No. CV026399 (hereinafter "Abarca v. Ferber"). This matter involved a dispute by co-owners of a residential property in Lathrop, California (the "Lathrop property.") Ms. Abarca was seeking an equitable distribution of the Lathrop property by sale.
2. On February 6, 2006, respondent filed on behalf of Mr. Ferber an Answer and a Cross-Complaint against Ms. Abarca. In his cross-complaint, Mr. Ferber sought partition, accounting, waste contribution, and chattel conversion/trespass to chattels.
3. In February or early March 2006, the Lathrop property was sold. On February 23, 2006, the Superior Court ordered that the proceeds from the sale of the Lathrop property be placed by respondent in an interest bearing Special Trust Account until judgment is entered or until disbursement is authorized by both sellers through counsel. Respondent received that order.
4. Pursuant to Business & Professions Code section 6211, these funds were neither nominal nor expected to remain in trust for a short period of time and, thus, the funds needed to be deposited into an interest bearing trust account until judgment is entered or until disbursement is authorized by both sellers through counsel.
5. On March 2, 2006, respondent received a check from Fidelity National Title Company for \$117,484.25 as the proceeds from the sale of the Lathrop property.
6. On March 3, 2006, respondent deposited the \$117,484.25 from the proceeds of the sale of the Lathrop property into a Certificate of Deposit (hereinafter "Respondent's CD"). Respondent was listed as the owner of this account. Respondent maintained these funds in the CD from March 3, 2006 through July 15, 2009.
7. On July 15, 2009, respondent withdrew the funds from respondent's CD, which by then had grown to \$129,929.11. Respondent received \$129,855.44 when he withdrew the funds, and he distributed \$67,968.39 of the funds to Ms. Abarca and her attorney, Michael Brown in July, 2009.

Respondent's CD account was penalized for an early withdrawal as follows: \$73.67 as a penalty and \$49.14 as forfeiture.

8. On July 15, 2009, respondent transferred the \$129,855.44 into his general client trust account at the Bank of Stockton, account number xxxx501. This is an IOLTA account pursuant to Business & Professions Code section 6211 and not a special trust account that earns interest for the clients. (Hereinafter all references to "client trust account" or "Respondent's trust account" is to respondent's client trust account at Bank of Stockton, account number xxxx501.

9. Respondent was a fiduciary to both Mr. Ferber and Ms. Abarca as regards the funds. Respondent owed the same duty under the Rules of Professional Conduct to Ms. Abarca regarding the funds as he owed to his client, Mr. Feber. (See *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979 [... the nature of the agreement pursuant to which the proceeds from the sale of the restaurant were deposited in petitioner's trust account created a duty to Camila as well as to petitioner's client. As a fiduciary his obligation to account for the funds extended to both parties claiming an interest in them. Having assumed the responsibility to hold and disburse the funds as directed by the court or stipulated by both parties, petitioner owed an obligation to Camila as a "client" to maintain complete records, "render appropriate accounts," and "[p]romptly pay or deliver to the client" on request the funds he held in trust.']) See also *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 330, fn. 7; *In the Matter of Respondent P* (Review Dept. 1993) 3 Cal. State Bar Ct. Rptr. 622, 632.

10. On or about March 30, 2009, the court issued a judgment after trial that Ms. Abarca would receive fifty percent of the net proceeds from the sale of the real property plus interest to date. It also ordered respondent to disburse the respective "trust funds" to the parties after the adjustments for accrued interest to and costs awarded to Ms. Abarca. Respondent received notice of this judgment and order.

11. Beginning on or about March 13, 2009, Ms Abarca, through her counsel, Mr. Brown, requested from respondent an accounting for the funds from the proceeds of the sale that was in respondent's possession. Mr. Brown made several requests for an accounting. Respondent received the requests for an accounting. Subsequently, respondent failed to provide Mr. Brown or Ms. Abarca with a full accounting for the funds.

12. On April 7, 2009 and, again, on or about April 13, 2009, Mr. Brown sent respondent a letter demanding Ms. Abarca's share of the funds. Respondent received these letters. Subsequently, respondent failed to distribute Ms. Abarca's share of the proceeds.

13. In the April 7, 2009 and April 13, 2009 letters to respondent, Mr. Brown again requested an accounting for the funds. Subsequently, respondent failed to provide Mr. Brown or Ms. Abarca with an accounting for the funds.

14. On or about April 15, 2009, Ms Abarca, through Mr. Brown, filed a motion to compel an accounting of the funds in respondent's possession. Respondent received the motion, but failed to provide the accounting.

15. On or about May 13, 2009, a hearing was held on the motion to compel an accounting. Respondent failed to appear. The court issued an order granting the motion to compel an accounting. Respondent received notice of this order.

16. On or about June 4, 2009, another hearing on this matter was held. With some slight modifications, the court affirmed the May 13, 2009 order that respondent provide an accounting. Respondent received notice of the court's June 4, 2009 order. Subsequently, respondent failed to provide an adequate accounting.

17. At a June 19, 2009 hearing, the court ordered a temporary stay of the enforcement of the judgment because respondent was going to file an appeal for his client. Respondent received notice of the judgment and notice of the order temporarily staying the enforcement of the judgment.

18. On May 27, 2009, respondent, on Mr. Feber's behalf, filed an appeal.

19. Subsequently, respondent failed to provide Mr. Brown or Ms. Abarca with an accounting. On or about May 13, 2010, Mr. Brown filed another motion for an accounting and for an order compelling answers to interrogatories.

20. On August 24, 2010, respondent filed an accounting. It only listed the final deposit, the deductions and the distribution of the funds. It failed to provide each individual interest earned on the account or properly describe the account that the funds were in.

21. Rule 4-402 of the San Joaquin County Local rules required among other things that an accounting contain: (A.) concise reference to the purposes of the trust and how they have been satisfied by the trustee during the period of the account; (B.) the names and addresses of the beneficiaries; (C.) a brief summary of the distribution made to or for the benefit of the beneficiaries; (D.) the investment objective and results with references to the purposes of the trust; and (E.) a statement of the percentage rate of return.

22. On November 2, 2010, the court ordered respondent to 1) provide an accounting as provided in rule 4-101(b) [sic] and Probate Code section 16061; 2) the accounting shall meet the standards and requirements of rule 4-402 of the San Joaquin County Local rules and must include documentation from the bank; and 3) the accounting shall be filed and served on Mr. Brown within 21 days. Respondent received this order.

23. On January 10, 2011, respondent filed an amended accounting.

24. On January 11, 2011, the court found respondent's accounting deficient. It also found the judgment only partially satisfied and approximately \$3,017.30 remained unpaid.

25. On January 20, 2011, respondent's appeal of the judgment was denied by the Court of Appeals.

26. On February 17, 2011, respondent provided an accurate and sufficient accounting. On February 17, 2011, a bank representative testified that the CD account was not a special trust account. This was the first time the court and Mr. Brown were informed of that fact.

27. On February 17, 2011, the court found respondent failed to provide an accounting and failed to comply with the court's order to keep the funds in a special trust account.

28. On April 26, 2011 the Court issued an Order. The order included the following: That respondent has failed to establish a special trust account as ordered by the court, but instead had established the account in the name of the respondent. Respondent did not make, or cause to be made, any unauthorized, improper, or questionable withdrawals; and he did not make or cause any other

improper account activity during the time that the subject account was opened. There was no commingling of client money with the attorney's money. The Court also found that the accounting rendered at the February 17, 2011 hearing was adequate, but that respondent failed to render an adequate accounting of funds held on behalf of a client within a reasonable time after Plaintiff Socorro Abarca demanded that he do so.

29. On October 12, 2011, the court issued an order surcharging respondent for the breach of his fiduciary duties from July 24, 2009 through September 23, 2011. The court surcharged respondent \$2, 757.60 for the interest that would have accrued. Respondent received notice of that order.

30. Respondent provided the \$2,641.32 of surcharged amount to attorney Michael Brown in March, 2012, with an additional payment of \$116.28 in April, 2012.

31. Probate Code section 16061 required respondent to on a reasonably request by the beneficiary, to "report to the beneficiary by providing the requested information to the beneficiary relating to the administration of the trust relevant to the beneficiary's interest." Probate Code section 16060 states that "[t]he trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration."

CONCLUSIONS OF LAW:

32. By failing to deposit the \$117,484.25 from the proceeds of the sale of the Lathrop property into a trust account from on or about March 3, 2006 through on or about July 24, 2009, respondent failed to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of Rules of Professional Conduct, rule 4-100(A).

33. By failing to promptly provide an accounting to Ms. Abarca and her attorney, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent's possession, in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

34. By failing to promptly provide an accounting to Ms. Abarca and her attorney, Mr. Brown, respondent violated Probate Code sections 16060 and 16061 and Rule 4-402 of the San Joaquin County Local rules and, thereby, failed to support the Constitution and laws of the United States and of this state, in willful violation of Business and Professions Code, section 6068(a).

35. By failing to deposit the \$117,484.25 from the proceeds of the sale of the Lathrop property into an interest earning special trust account from on or about March 3, 2006 through on or about July 24, 2009 and by transferring the funds into his general client trust account in July 2009, that was not a special interest earning trust account and instead transferring the funds into an account where the parties would not obtain interest, in violation of a court order, by failing to provide Ms. Abaca and her attorney an accounting and then adequate accountings, despite court orders to do so, by failing to comply with the local rules regarding accountings, despite court orders, respondent wilfully disobeyed or violated an order or orders of the court requiring him to do or forbear an act or acts connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of Business and Professions Code, section 6103.

36. By failing to deposit the funds in his possession into an interest earning trust account for over three years, by failing to promptly and adequately account to Ms. Abarca and her attorney, by failing to place the funds where his client and Ms. Abarca could earn interest after July 24, 2009, and by

failing to comply with the local rules regarding accounting, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

Case No. (12-O-10415) Waggle

FACTS:

37. In June, 2009, Jennifer Waggle (“Waggle”) hired respondent to resolve a problem with a used car purchase. Waggle believed that the car she purchased had some serious defects. She had a mechanic examine it and he gave her a report that the frame of the car was not connected to the body and that the transmission was cracked. Respondent agreed to take the case on a contingency fee basis. Respondent and Waggle signed a written contingency fee agreement in March, 2010. The fee agreement specified that respondent would be “investigating a claim for fraud and statutory remedies arising out of a motor vehicle purchase and sale, and to prosecute such claim if, in the attorney’s judgment, such claim is warranted.”

38. Thereafter, respondent took no substantive action on Waggle’s matter. Respondent never filed suit on her behalf.

39. Commencing in or about May, 2010 through March, 2012, Waggle sent respondent twenty or more emails asking him about the status of her case. Waggle also left respondent telephone messages. Respondent received Waggle’s emails and phone messages. Respondent responded to several emails and messages. Respondent would advise Waggle that he was busy with work, or preparing for another trial, or that he need time to formalize a plan of action, or he was putting the case together. Respondent did not give Waggle any substantive response regarding the value or efficacy of her claim, or bring suit on her behalf.

40. Waggle emailed respondent in November, 2011 and requested the return of her file. She emailed him again in December, 2011 as well. Respondent received the November and December 2011 emails from Waggle and failed to return Waggle’s file to her.

41. Waggle made a State Bar complaint in January, 2012.

42. In March, 2012, respondent returned Waggles’ file to her.

CONCLUSIONS OF LAW:

43. By failing to take any action on Waggle’s case regarding her used car purchase in over two years, from June 2009 to November, 2011, respondent failed to perform, in willful violation of Rules of Professional Conduct, rule 3-110(A).

44. By failing to return Waggle’s file to her from November, 2011 to March, 2012, a period of four months, respondent failed to promptly return the client’s file at the request of the client, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

PENDING PROCEEDINGS:

The disclosure date referred to, on page 2, paragraph A(7), was March 28, 2012.

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 12/21/2011 (Case No. 11-O-14511) and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of another Notice of Disciplinary charges and/or an Amended Notice of Disciplinary Charges, and further waive the right to the filing of a Notice of Disciplinary charges and a formal hearing on any charge, including all charges related to Case No. (12-O-14511) (Waggle matter).

Here, the State Bar has dismissed two charges (Counts Five and Six) based upon the State Bar's assessment of the evidence that would be presented at trial.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct call for reproof or suspension for failure to perform in a client matter. (Standard 2.4(b)). They also call for suspension or disbarment for a violation of Business and Professions Code, section 6103 (Standard 2.6 (b)). And the Standards call for ninety days of actual suspension for any violation of Rule 4-100. (Standard 2.2(b)).

Here, the Superior Court involved in the matter made a specific finding that while respondent failed to place the funds in the interest bearing special trust account, as directed, and while respondent failed to provide a timely accounting, there was no commingling, no unauthorized, improper, or questionable withdrawals or any improper account activity. Under these circumstances, the State Bar has decided that the needs of public protection are met with a sixty day actual suspension.

Case law supports a range of discipline from public reproof through actual suspension.

In *Fitzimmons v. State Bar* (1983) 34 Cal. 3d. 327, the attorney received a public reproof for failing to account to the client about fees in a probate matter.

In *Dudugjian v. State Bar* (1991) 52 Cal. 3d. 1092, the attorney received a public reproof for holding \$5,356.94 in client funds in his general account and applying the funds to a client's bill. He was found culpable of a violation of Rules of Professional Conduct, rule 4-100.

In *Galardi v. State Bar* (1987) 43 Cal. 3d. 683, the attorney received a thirty day actual suspension, with probation, for diverting funds of his co-joint-venturers and for failing to account for the funds to the joint-ventureres. He had 28 years of discipline-free practice.

In *Waysman v. State Bar* (1986) 41 Cal. 3d. 452, the attorney received six months stayed, one year of probation, for commingling and misappropriation of client monies. The attorney failed to keep records, and \$24,000 was misappropriated.

AGGRAVATION & MITIGATION:

Aggravation:

Standard 1.2(b)(iv) harm.

Case No. 12-O-10415

While waiting for respondent to take action on her behalf, Waggle suffered various harm related to her lack of progress on her case regarding the used car purchase. Waggle had problems with her bank regarding the car loan, and Waggle had problems with the DMV regarding the registration and status of the car. The DMV ultimately placed a lien on Waggle's checking account. Furthermore, the car dealership went out of business in the intervening time period that respondent failed to bring suit. Therefore, if Waggle had any basis for suit, Waggle's likely remedies are no longer available.

Mitigation:

Standard 1.2(e)(v)

Respondent has been candid and cooperative in reaching a stipulation in this matter.

OTHER FACTORS TAKEN INTO CONSIDERATION

Although the misconduct is serious, Respondent has had no prior record of discipline since being admitted to the practice of law on June 2, 1980, over thirty years ago.

COSTS OF DISCIPLINARY PROCEEDINGS.

YB
1/9/12
PPB Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of ~~1/9/12~~, the prosecution costs in this matter are \$3,689.00. 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.

(Do not write above this line.)

In the Matter of Marc Bourget	Case number(s): 11-O-14511; 12-O-10415
----------------------------------	---

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 Fact, Conclusions of Law and Disposition.

<u>Apr 5, 2012</u> Date	<u>Marc Bourget</u> Respondent's Signature	<u>Marc Bourget</u> Print Name
<u>4-5-12</u> Date	<u>Richard Gibson, Jr.</u> Respondent's Counsel Signature	<u>Richard Gibson, Jr.</u> Print Name
<u>4/6/2012</u> Date	<u>Robin B. Brune</u> Senior Trial Counsel's Signature	<u>Robin B. Brune</u> Print Name

(Do not write above this line.)

In the Matter of: Marc Bourget	Case Number(s): 11-O-14511; 12-O-10415
-----------------------------------	---

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.

1. On pp. 10 and 15, references to case number "12-O-14511" are deleted and replaced with "12-O-10415."

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

April 19, 2012

Judge of the State Bar Court

Cat McElroy

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 April 19, 2012, 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:

RICHARD JOSEPH GIBSON, JR.
GIBSON & GIBSON
2027 GRAND CANAL BLVD #35
STOCKTON, CA 95207

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

ROBIN BRUNE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 19, 2012.



Mazie Yip
Case Administrator
State Bar Court