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**State Bar Court of California
Hearing Department
San Francisco
REPROVAL**

Counsel for the State Bar Manuel Jimenez Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2288 Bar # 218234	Case Number(s): 12-O-11672	For Court use only PUBLIC MATTER FILED MAR 12 2019 <i>WJ</i> STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Robert Earl Thurbon, Jr. 2377 Gold Meadow Way, Suite 100 Gold River, CA 95670-4444 (916) 636-1840 Bar # 133617	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter of: Robert Earl Thurbon, Jr. Bar # 133617 A Member of the State Bar of California (Respondent)	PUBLIC REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 14, 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 entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **13** 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 July 1, 2018)



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- It is ordered that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.
 - Case ineligible for costs (private reproof).
 - It is ordered that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. One-third of the costs must be paid with Respondent's membership fees for each of the following years: 2020, 2021, and 2022.
- If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be 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.
- (9) The parties understand that:
- (a) A private reproof imposed on a Respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the Respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof imposed on a Respondent after initiation of a State Bar Court proceeding is part of the Respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) A public reproof imposed on a Respondent is publicly available as part of the Respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline:**
- (a) State Bar Court case # of prior case:

(Do not write above this line.)

- (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) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
 - (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
 - (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
 - (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
 - (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.
 - (7) **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.
 - (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
 - (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
 - (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
 - (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See page 10.
 - (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
 - (13) **Restitution:** Respondent failed to make restitution.
 - (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
 - (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [Standards 1.2(i) & 1.6]. 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 likely to recur.

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- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of Respondent's misconduct or to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's 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 Respondent.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct, Respondent suffered extreme emotional difficulties or physical or mental 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 Respondent, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 Respondent's control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily 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 Respondent's misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No prior discipline, see page 10.
Good faith, see page 10-11.
Good character, see page 11.
Pretrial stipulation, see page 11.

D. Discipline:

Discipline – Reproval

Respondent is **Publicly** reprovved. Pursuant to the provisions of rule 5.127(A) of the Rules of Procedure of the State Bar, this reprovval will be effective when this stipulation becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the protection of the public and the interests of Respondent will be served by the following conditions being

attached to this reproof. Failure to comply with any condition attached to this reproof may constitute cause for a separate disciplinary proceeding for willful breach of rule 1-110 of the State Bar Rules of Professional Conduct. Respondent is ordered to comply with the following conditions attached to this reproof for (Reproof Conditions Period) following the effective date of the reproof.

- (1) **Review Rules of Professional Conduct:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.
- (2) **Comply with State Bar Act, Rules of Professional Conduct, and Reproof Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's reproof.
- (3) **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR within ten (10) days after such change, in the manner required by that office.
- (4) **Meet and Cooperate with Office of Probation:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 45 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent must meet with the probation case specialist in person or by telephone. During the Reproof Conditions Period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's Reproof Conditions Period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with reproof conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) **Quarterly and Final Reports:**
 - a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the Reproof Conditions Period. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the Reproof Conditions Period and no later than the last day of the Reproof Conditions Period.

- b. Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
 - c. Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
 - d. Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after the Repeal Conditions Period has ended. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (7) **State Bar Ethics School:** Within one year after the effective date of the order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session.
 - (8) **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because
 - (9) **State Bar Client Trust Accounting School:** Within one year after the effective date of the order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session.
 - (10) **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within _____ after the effective date of the order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete _____ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity.
 - (11) **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the Repeal Conditions Period, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ROBERT EARL THURBON, JR.

CASE NUMBER: 12-O-11672-MC

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. 12-O-11672-MC (State Bar Investigation)

FACTS:

1. Prior to 2010, respondent was hired by Jody Thulin ("Thulin") to represent her in a whistleblower retaliation action against the Gateway Unified School District ("GUSD") in *Thulin v. Gateway Unified School District*, Shasta County Superior Court Case No. CV-09-167034 ("*Thulin case*").

2. Also prior to 2010, respondent has hired by Kendall Lynn ("Lynn") to represent him in a discrimination action against GUSD in *Lynn v. Gateway Unified School District*, U.S. District Court Case No. 2:20-CV-00981-JAN-KJN ("*Lynn case*").

3. Prior to hiring respondent, Lynn used his position as IT Director to access GUSD's computer network to copy emails from the email server, without authorization. The server contained the emails of every employee in the entire school district, going back at least four months. Lynn copied 39,312 emails, consisting of over 100,000 pages. Lynn did not have permission or authority to take the emails. Lynn sent respondent copies of emails that Lynn believed to be relevant to his discrimination lawsuit against GUSD. Respondent's staff copied the emails onto the firm's computer system.

4. In 2010, Lynn informed respondent that he believed among the emails he had sent to respondent were emails relevant to respondent's other client, Thulin. Thereafter, respondent instructed Thulin to review the emails Lynn provided to determine if any emails were responsive to defendant GUSD's request for production of documents. Thulin identified 147 emails she considered responsive to the request for production of documents, three of which she believed relevant to her opposition to the defendant's April 26, 2010 motion for summary judgment.

5. On June 28, 2010, respondent's law office produced the 147 emails to GUSD.

6. On June 29, 2010, during the deposition of Thulin, GUSD learned for the first time that respondent was in possession of the GUSD emails.

7. On June 30, 2010, GUSD appeared *ex parte* in the *Thulin* case to seek a temporary restraining order compelling respondent to return all copies of emails wrongfully obtained.

8. On July 1, 2010, the Court in the *Thulin* case issued a preliminary injunction and temporary restraining order, as well as an order to show cause to Thulin and respondent, ordering them to appear on July 19, 2010, and show cause why they should not be enjoined and restrained during the pendency of the action, as follows: "From using in any fashion, disseminating, disclosing, displaying or discussing in any manner, any portion of any electronic communication (emails) by and between any employee, administrator and/or staff current or former of the Gateway Unified School District and any third party, under any circumstances and for any reason."

9. On August 31, 2010, the Court in the *Thulin* case issued an order granting defendant's request for an injunction, as follows: "Plaintiff and her attorney shall send to defense counsel all electronic and paper document copies of the subject emails (Bate stamped by Plaintiff as 1673-1819) within seven (7) days of this order. Plaintiff and her counsel must turn over all copies of the subject emails including those currently in their possession and any copies that Plaintiff or Plaintiff's counsel provided to any third party at any point in time. Plaintiff and Plaintiff's counsel, agents and employees are prohibited from further use of the subject emails, dissemination of the subject emails, possession of the subject emails and are prohibited from discussing the content of the subject emails with anyone."

10. On September 1, 2010, GUSD filed a complaint for provisional and injunctive relief and damages in *Gateway Unified School District v. Kendall Lynn, Jody Thulin, Robert Thurbon, Thurbon & McHaney, L.P.*, Shasta County Superior Court Case No. 10-170167 ("*Gateway case*").

11. On November 8, 2010, the Court in the *Gateway case* granted GUSD's request for a preliminary injunction against respondent, Thulin and Lynn, prohibiting them from using all emails that Lynn downloaded and mandating that all electronic and paper copies of emails be surrendered. The order also stated: "The determination of possession and use of any of the emails in Mr. Lynn's federal court case shall be left to the parties through law and motion practice in the Federal Court. This order does not apply to or affect the federal case filed by Mr. Lynn." The Court concluded: "This Court's order is intended to prohibit the use, discussion and dissemination of the contents of the emails, not to restrict discovery of how the emails were obtained by Defendants, how the Defendants used the emails or which emails have been reviewed by the Defendants."

12. On February 17, 2011, GUSD took the deposition of Lynn in the *Lynn case*. On the date, respondent, produced 227 documents, 115 consisted of emails that both respondent and Lynn were enjoined from using and mandated to surrender by the November 8, 2010 court order in the *Gateway case*.

13. On March 14, 2011, GUSD filed an "Application for an Order to Show Cause Re: Contempt" in the *Gateway case*.

14. On March 29, 2011, respondent submitted a written request to the superintendent of GUSD for "specific and identifiable non-exempt documents and records," consisting of emails that respondent had been enjoined from possessing, using or discussing by the Court's November 8, 2010 preliminary injunction in the *Gateway case*.

15. On April 8, 2011, respondent filed a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in the *Thulin* case, seeking to force GUSD to comply with a "public records request" for the emails that Thulin and respondent were enjoined for possessing, using, or discussing in the *Thulin* and *Gateway* cases. The filing specifically identified by bates number, date,

and the sender and recipient, emails that respondent had been ordered not to use, possess or discuss, in violation of the August 31, 2010, and November 8, 2010 court orders.

16. On July 11, 2011, the Court consolidated the *Thulin* case and the *Gateway* case, for purposes of hearing the orders to show cause regarding contempt (“Thulin/GUSD Consolidated Matter”).

17. On October 31, 2011, the Court in the Thulin/GUSD Consolidated Matter issued an order after hearing, making various orders and findings. First, the Court found respondent in contempt for twice willfully violating the August 31, 2010, court order in the *Thulin* case, by making a public records request to the superintendent of GUSD on March 29, 2011, and by subsequently filing of a petition for a writ of mandate on April 8, 2011, in an attempt to compel disclosure of the documents. The Court sanctioned respondent \$500 for each violation, for a total of \$1,000. Second, the Court found respondent in contempt for failing to comply with the Court’s November 8, 2010, order in the *Gateway* case to surrender, “All copies of the emails, whether in paper or electronic format...” The Court sanctioned respondent \$500. Third, the Court also found respondent in contempt for attaching the emails to a motion to modify or lift the preliminary injunction and attaching the emails to an opposition to seal records, in violation of November 8, 2010 order. The Court sanctioned respondent \$500 for each violation, for a total of \$1,000. In total, the Court imposed sanctions of \$2,500 against respondent. Respondent timely paid the sanctions, but failed to report the sanctions to the State Bar.

CONCLUSIONS OF LAW:

18. By failing to obey the Court’s order of August 31, 2010, and by failing to obey the Court’s order of November 8, 2010, respondent wilfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent’s profession which he ought in good faith to do or forbear, in willful violation of section 6103 of the Business and Professions Code.

19. By failing to report to the State Bar the imposition of \$2,500 in sanctions ordered by the Court on October 31, 2011, respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time respondent had knowledge of the imposition of any judicial sanctions against respondent, in willful violation of Business and Professions Code section 6068(o)(3).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent’s violation of court orders and failure to report sanctions represent multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Although respondent’s misconduct is serious, he is entitled to mitigation for having practice law for approximately 22 years without discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Good Faith Belief: Respondent did not believe that the Court’s orders specifically prohibited him from the making a public records request, attaching the emails to pleadings, or trying to obtain the emails through discovery, because the subject emails were pertinent to two suits, one in state court, and the other in federal court. Respondent interpreted that language as authorizing him to possess the subject emails.

Good Character: Respondent submitted nine character declarations and three people prepared to testify, all of whom are aware of the full extent of respondent's misconduct and attest to his good character. The declarations are from a wide range of references in the legal and general communities, including attorneys, law enforcement officers, certified public accountants, educators, all of whom have known respondent for between 11 to 49 years.

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Here, respondent violated two court orders and failed to report sanctions to the State Bar. Standard 1.7(a) requires that where a respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

The most severe sanction applicable to respondent's misconduct is found in standard 2.12(a), which provides in pertinent part "Disbarment or actual suspension is the presumed sanction for disobedience or violation of a court order..." In aggravation, respondent committed multiple acts of misconduct. Respondent is entitled to mitigation for no prior record of discipline in 22 years of practice, good character and for entering into a pretrial stipulation.

While standard 2.12(a) anticipates that an actual suspension is the presumptive sanction, the facts in this case justify deviation from the Standards, based on the limited nature of the misconduct and evidence of mitigation, which outweighs the aggravating circumstances. A deviation from the Standards is warranted in this matter.

Case law is instructive. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the court recommended a six-month stayed suspension for an attorney who failed to perform in a criminal appellate and habeas corpus proceedings, failed to obey court orders and failed to report sanctions in a single client matter. In aggravation, the court found multiple acts of misconduct and harm. In mitigation, the court found no prior record of discipline in 17 years of practice, no further misconduct, good character and cooperation for entering into a fact stipulation.

In *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, an attorney was publically reprovved for violating a court order. The parties recognize that at the time of *Riordan* and *Respondent Y* were decided, the applicable standards recommended suspension to disbarment, and that the current standard differs in that it recommends at least an actual suspension. But, given all factors, particularly respondent's prior 22 years of discipline free practice, good character witnesses, and his honest but unreasonable interpretation of the subject order, a public reprovval is sufficient to protect the public and is consistent with the purposes of discipline.

Respondent's misconduct is less egregious than in *Riordan* and there is less aggravation and more mitigation. As such, discipline lower than that imposed in *Riordan* is appropriate.

On balance, a public reprovval with a condition that respondent attend State Bar Ethics School will serve the purposes of attorney discipline.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
12-O-11672-MC	Three	Business and Professions Code section 6106

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of February 7, 2019, the discipline costs in this matter are \$7,598. 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: Robert Earl Thurbon, Jr.	Case Number(s): 12-O-11672
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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.

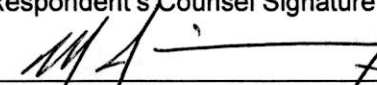
February 9, 2019 Date	 Respondent's Signature	Robert Earl Thurbon, Jr. Print Name
_____ Date	_____ Respondent's Counsel Signature	_____ Print Name
February , 2019 Date	_____ Deputy Trial Counsel's Signature	Manuel Jimenez Print Name

(Do not write above this line.)

In the Matter of: Robert Earl Thurbon, Jr.	Case Number(s): 12-O-11672
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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.

February _____, 2019 Date	_____ Respondent's Signature	Robert Earl Thurbon, Jr. Print Name
_____ Date	_____ Respondent's Counsel Signature	_____ Print Name
February 11, 2019 Date	 Deputy Trial Counsel's Signature	Manuel Jimenez Print Name

(Do not write above this line.)

In the Matter of: ROBERT EARL THURBON, JR.	Case Number(s): 12-O-11672
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REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

1. On page 1 of the Stipulation, in the lower right box, "Submitted to: Assigned Judge" is deleted and in its place is inserted "Submitted to: Settlement Judge";
2. On page 5 of the Stipulation, in the first paragraph, "conditions attached to this reproof for (Reproof Conditions Period)" is deleted and in its place is inserted "conditions attached to this reproof for one year";
3. On page 8 of the Stipulation, numbered paragraph 2, "respondent has hired" is deleted and in its place is inserted "respondent was hired";
4. On page 10 of the Stipulation, in the section entitled No Prior Discipline, "for having practice law" is deleted and in its place is inserted "for having practiced law"; and
5. On page 11 of the Stipulation, in the section entitled Good Character, "the declarations are from are from" is deleted and in its place is inserted "the declarations are from".

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 Rules Proc. of State Bar, rule 5.58(E) & (F).) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

March 12, 2019
Date

PAT E. McElroy
PAT E. McELROY, JUDGE PRO TEM
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 Court Specialist 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 March 12, 2019, 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:

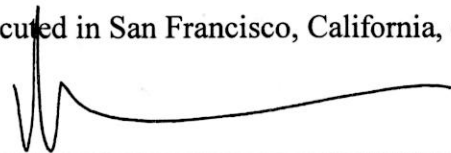
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ROBERT E. THURBON JR
ROBERT E. THURBON, ATTORNEY INC.
2377 GOLD MEADOW WAY STE 100
GOLD RIVER, CA 95670

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

Manuel Jimenez, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 12, 2019.



Vincent Au
Court Specialist
State Bar Court