

(Do not write above this line.)

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

**ORIGINAL**

<p>Counsel For The State Bar</p> <p>Melissa R. Marshall Contract Attorney Office of the Chief Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 Telephone: (213) 765-1277</p> <p>Bar # 192625</p>	<p>Case Number(s): 12-O-15444</p>	<p>For Court use only</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b> ✓</p> <p><b>DEC 16 2013</b></p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>David Cameron Carr 525 B Street, Suite 1500 San Diego, CA 92101-4417 Telephone: (619) 696-0526</p> <p>Bar # 124510</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: MICHAEL ANTHONY RIVERA</p> <p>Bar # 136931</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 December 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 entirely 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.

(Effective January 1, 2011)



(Do not write above this line.)

- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: two billing cycles following the effective date of the Supreme Court Order. (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 02-O-15040
  - (b)  Date prior discipline effective November 8, 2005.
  - (c)  Rules of Professional Conduct/ State Bar Act violations: rule 1-300(B), Rules of Professional Conduct.
  - (d)  Degree of prior discipline private reproof. See Attachment to Stipulation, at page 11.
  - (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 to Stipulation, at page 11.

(Effective January 1, 2011)

Actual Suspension

- (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. See Attachment to Stipulation, at page 11.
- (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.

(Do not write above this line.)

- (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. See Attachment to Stipulation, at page 11.
- (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:**

Pretrial Stipulation - See Attachment to Stipulation, at page 11.

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of one (1) 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 (2) 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 60 days.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

**E. Additional Conditions of Probation:**

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

(Effective January 1, 2011)

Actual Suspension

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

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

- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
  - No Ethics School recommended. Reason: .
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10)  The following conditions are attached hereto and incorporated:
  - Substance Abuse Conditions
  - Law Office Management Conditions
  - Medical Conditions
  - Financial Conditions

**F. Other Conditions Negotiated by the Parties:**

(Do not write above this line.)

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

(Do not write above this line.)

In the Matter of: <b>MICHAEL ANTHONY RIVERA</b>	Case Number(s): <b>12-O-15444</b>
--	--------------------------------------

### 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
John S. Brandon	\$2,941.31	December 1, 2013

- 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:
- 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";

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.



7. On July 12, 2011, just hours after the Court confirmed that no stay was in effect with respect to the Gage property, and the day before the scheduled foreclosure trustee sale of the Gage property, Respondent filed a Chapter 13 bankruptcy petition on behalf of Mr. Barajas' wife, Marcia Barajas (the "Chapter 13 case"). Respondent filed Ms. Barajas' Chapter 13 case for the improper purpose of forestalling the foreclosure on the Gage property and without a genuine intent to obtain a discharge of debt on behalf of Ms. Barajas.

8. On October 31, 2011, Mr. Brandon filed a motion for sanctions against Respondent for filing Ms. Barajas' Chapter 13 case for an improper purpose. Mr. Brandon specifically requested attorneys' fees and costs for expenses associated with Ms. Barajas' case.

9. On April 27, 2012, the United States Bankruptcy Court ("Bankruptcy Court") granted Mr. Brandon's motion for sanctions against Respondent. The Court imposed sanctions on Respondent in the amount of \$18,895 pursuant to Federal Rule of Bankruptcy Procedure 9011(c) based upon his having signed the petition package that commenced Ms. Barajas' Chapter 13 case, which petition package the Court found was not presented for a proper purpose. The Court found that the purpose of the filing of Ms. Barajas' Chapter 13 case was to further forestall a foreclosure with regard to the Gage property as to which the Court had approximately two hours earlier refused to re-impose the automatic stay in Mr. Barajas' Chapter 11 case, and as to which record title stood in the name of Mr. Barajas as his sole and separate property. The Court ordered Respondent to pay Mr. Brandon within 30 days after entry of the order. The order was entered on April 27, 2012, and Respondent was served via notice of electronic filing. Respondent received notice of the sanction order.

10. Respondent failed to pay the sanctions within 30 days of April 27, 2012, as ordered by the Bankruptcy Court.

11. The Bankruptcy Court's sanction order was subject to post judgment interest at .20 percent per annum, pursuant to Title 28 United States Code section 1961.

12. Respondent failed to report the April 27, 2012 imposition of sanctions to the State Bar within 30 days of his knowledge of the imposition of the sanctions.

13. The State Bar sent Respondent a letter on July 16, 2012, requesting an explanation for his failure to pay the sanctions and his failure to report the imposition of sanctions. Respondent received the letter.

14. Respondent's counsel reported the April 27, 2012 imposition of sanctions to the State Bar on or about July 25, 2012.

15. In October 2012, Respondent filed with the Bankruptcy Court a Motion for Order Authorizing Payment of Sanctions Award in Installments. In support of his motion, Respondent filed a declaration under penalty of perjury indicating that he was financially unable to pay the award in full due to a lack of assets, insufficient current income and other unavoidable expenses.

16. On November 14, 2012, the Bankruptcy Court heard Respondent's Motion for Order Authorizing Payment of Sanctions Award in Installments and denied the motion on procedural grounds. The Court ruled that "[t]he only scenario in which the Court becomes involved in payment plans of this kind or in assessing the financial condition of a party that it has sanctioned is in connection with a hearing on a motion to hold the sanctioned party in contempt. In that context, the Court has in the past

held the sanctioned party in contempt but has ordered that the contempt can be purged by the making of a series of payments. This has not occurred. No contempt motion has been brought. Mr. Rivera should start paying amounts due as quickly as he can.”

17. Respondent has made the following payments towards the sanctions imposed: \$2,000 on October 5, 2012; \$1,000 on November 14, 2012; \$1,000 on December 31, 2012; \$1,000 on March 23, 2013; \$1,000 on March 29, 2013; \$1,000 on June 15, 2013; \$1,000 on August 23, 2013; \$2,500 on October 15, 2013; \$2,500 on October 24, 2013; and \$3,000 on November 1, 2013. As a result of these payments, Respondent still owes principal in the amount of \$2,895 and interest in the amount of \$46.31.

#### CONCLUSIONS OF LAW:

18. By filing Ms. Barajas' Chapter 13 case for the purpose of forestalling the foreclosure on the Gage property and without the intent to obtain a discharge of debt for Ms. Barajas, Respondent failed to counsel or maintain such actions, proceedings, or defenses only as appear to him legal or just, in willful violation of Business and Professions Code, section 6068(c).

19. By failing to pay the \$18,895 in sanctions within 30 days of the entry of the April 27, 2012 order, Respondent willfully 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 Business and Professions Code, section 6103.

20. By failing to report the April 27, 2012 imposition of sanctions within 30 days or until July 25, 2012, 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.

**Prior Record of Discipline (Std. 1.2(b)(i)):** On November 8, 2005, Respondent received a private reproof with conditions for continuing to practice law during a period of time in 2002 when he was not entitled to practice law due to his failure to comply with minimum continuing legal education requirements. Respondent's prior discipline constitutes an aggravating factor pursuant to standard 1.2(b)(i).

**Harm (Std. 1.2(b)(iv)):** Respondent filed the Chapter 13 case for the sole purpose of further forestalling a foreclosure sale. His actions caused Mr. Brandon's attorney to perform substantial additional work, Mr. Brandon to incur substantial additional expenses, and the courts to be burdened with unnecessary litigation. (See *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774.)

**Multiple Acts of Misconduct (Std. 1.2(b)(ii)):** Respondent committed at least three acts of misconduct in a single client matter. These multiple acts of misconduct constitute an aggravating factor pursuant to standard 1.2(b)(ii).

#### MITIGATING CIRCUMSTANCES.

**Good Character (Std. 1.2(e)(vi)):** Respondent has provided six character letters from people attesting to his integrity, honesty, and professionalism. The character references include two attorneys,

an enrolled agent admitted to practice before the Internal Revenue Service, an investment advisor representative, and two former clients, including a real estate broker and an assistant manager for a commercial bank. Each character reference acknowledged being aware of the nature of the misconduct, and each was able to point to specific reasons for his or her high opinion of Respondent's moral character in spite of the misconduct.

**Pretrial Stipulation:** Respondent stipulated to facts, conclusions of law, and disposition in order to resolve his disciplinary proceedings as efficiently as possible, thereby avoiding the necessity of a trial and saving State Bar time and resources. (*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].)

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed 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." (*In re Morse* (1995) 11 Cal.4th 184, 205; std. 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (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.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Standard 2.6 states that a member's culpability of violating certain specified sections of the Business and Professions Code, including sections 6068 and 6103, shall result in disbarment or suspension depending on the gravity of the offense or harm to the victim with due regard to the purposes of imposing discipline set forth in standard 1.3. Here, standard 2.6 applies because Respondent's misconduct includes violations of Bus. & Prof. Code sections 6068(c), 6103, and 6068(o)(3). Neither the gravity of the offense nor the level of harm to the victims appears to warrant disbarment in this case; therefore, suspension is the appropriate level of discipline.

Aggravating factors include that Respondent's misconduct evidences multiple acts of misconduct and caused harm to Mr. Brandon and the administration of justice, and Respondent has prior discipline. However, the current misconduct arose out of a single client matter, and Respondent is entitled to mitigation for his evidence of good character and for acknowledging wrongdoing by entering into a pretrial stipulation. Further, Respondent has made periodic payments totaling \$13,000 to Mr. Brandon over the last eighteen months. Based on the totality of the circumstances, an actual suspension of 60 days will protect the public, courts and legal profession; maintain high professional standards by attorneys, and preserve public confidence in the legal profession. (Standard 1.3.)

Case law also supports the stipulated discipline. In *Sorensen v. State Bar* (1991) 52 Cal. 3d 1036, the Supreme Court imposed a stayed one-year suspension, with two years of probation and 30 days actual suspension for a case involving the pursuit of an unjust action. In *Sorensen*, the attorney served a complaint for fraud and deceit on a court reporter following her small claims judgment against him for nonpayment of a deposition transcript. The evidence showed the attorney was motivated by spite and vindictiveness. The fraud action was dismissed at an unopposed motion for summary judgment, but the court reporter incurred over \$4,000 in legal fees and expenses. While the misconduct in *Sorensen* was egregious, the present case involves more significant financial harm, multiple acts of misconduct, and a prior record of discipline. Given these factors in aggravation, a longer period of suspension is warranted.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 8, 2013, the prosecution costs in this matter are approximately \$4,500. 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.

#### **EXCLUSION FROM MCLE CREDIT**

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: MICHAEL ANTHONY RIVERA	Case number(s): 12-O-15444
---	-------------------------------

**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>Michael A. Rivera</u>
Date	Respondent's Signature	Print Name
_____	_____	<u>David Cameron Carr</u>
Date	Respondent's Counsel Signature	Print Name
_____	_____	<u>Melissa R. Marshall</u>
Date	Contract Attorney for the State Bar Signature	Print Name

(Do not write above this line.)

In the Matter of:  
MICHAEL ANTHONY RIVERA

Case number(s):  
12-O-15444

### 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.

Date

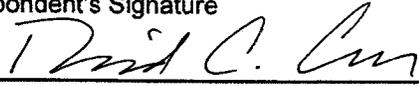
11/19/13

Date

11/21/13

Date

Respondent's Signature



Respondent's Counsel Signature



Contract Attorney for the State Bar Signature

Michael A. Rivera

Print Name

David Cameron Carr

Print Name

Melissa R. Marshall

Print Name

(Do not write above this line.)

In the Matter of: MICHAEL ANTHONY RIVERA	Case Number(s): 12-O-15444
---	-------------------------------

### ACTUAL SUSPENSION ORDER

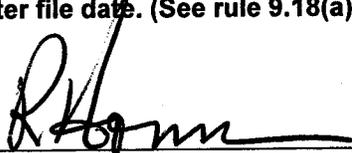
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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.

On page 2 of the stipulation, the "X" in box B(4) is DELETED, and on page 11 of the stipulation, under the heading "Aggravating Circumstances," the second paragraph, which is titled "Harm" is also DELETED to remove the stipulated aggravation based on significant harm. The harm to Mr. Brandon has all but effectively been ameliorated by respondent's payment of \$16,000 of the \$18,895 sanctions award in favor of Mr. Brandon. Moreover, there is no evidence to support a finding of significant harm to the bankruptcy court (or to the administration of justice in general) that is separate and apart from the evidence that supporting culpability. (In the Matter of Rose (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192, 203, 204; In the Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 76; In the Matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 240.) Nor is there any evidence of any harm above the harm that is inherent in bringing or maintaining an unjust action. (In the Matter of Laden (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678, 684.)

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.)**

12-13-13  
Date

  
RICHARD A. HONN  
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 San Francisco, on December 16, 2013, 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:

DAVID C. CARR  
LAW OFFICE OF DAVID CAMERON CARR PLC  
525 B ST STE 1500  
SAN DIEGO, CA 92101

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

MELISSA R. MARSHALL, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 16, 2013.

  
\_\_\_\_\_  
Mazie Yip  
Case Administrator  
State Bar Court