

ORIGINAL

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<b>State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION</b>		
Counsel For The State Bar  <b>Sherell N. McFarlane</b> <b>Deputy Trial Counsel</b> <b>845 South Figueroa Street</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1288</b>  Bar # 217357	Case Number(s): <b>13-O-10587-DFM</b>	For Court use only  <div style="text-align: center;"> <b>FILED</b>  <b>JUN 17 2014</b>          STATE BAR COURT          CLERK'S OFFICE          LOS ANGELES       </div>
Counsel For Respondent  <b>Richard A. Moss</b> <b>Law Offices of Richard A. Moss</b> <b>255 South Marengo Avenue</b> <b>Pasadena, CA 91101</b> <b>(626) 796-7400</b>  Bar # 42329	<b>PUBLIC MATTER</b>	
In the Matter of: <b>ALANA GERSHFELD</b>  Bar # 196454  A Member of the State Bar of California (Respondent)	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <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.**

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**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **September 1, 1998**.
- (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."

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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):
- 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: (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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline**
- (a)  State Bar Court case # of prior case 11-O-18814, 12-O-12217. For more information regarding Respondent's prior discipline, see Stipulation Attachment at pages 8-9.
  - (b)  Date prior discipline effective **December 19, 2012.**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Rules 3-110(A) and 4-100(B)(4); and Business and Professions Code section 6068(m).**
  - (d)  Degree of prior discipline **One year suspension, stayed, three years probation with conditions including actual suspension for 90 days, and the requirements that Respondent comply with rule 9.20 of the California Rules of Court, successfully complete Ethics School and the MPRE, and satisfy financial conditions.**
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (2)  **Dishonesty:** Respondent's misconduct was intentional, 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 Stipulation Attachment at page 9.

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- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Stipulation Attachment at page 9.**
- (8)  **Restitution:** Respondent failed to make restitution.
- (9)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(g) & 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 deemed serious.
- (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 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 with a good faith belief that was honestly held and 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 the member, 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 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.

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- (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 his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**Pretrial Stipulation: See Stipulation Attachment at page 9.**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **two (2) years**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1) 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 **three (3) 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 **ninety (90) 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 1.2(c)(1), 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 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.

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- (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: **Respondent is required to complete Ethics School as part of her discipline in Case No. 11-O-18814, et al.**
- (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
  - Medical Conditions
  - Law Office Management Conditions
  - Financial Conditions

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

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- (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: **Respondent is required to complete the MPRE as part of her discipline in Case No. 11-O-18814, et al.**
- (2)  **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5)  **Other Conditions:**

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

IN THE MATTER OF: ALANA GERSHFELD

CASE NUMBER: 13-O-10587

**FACTS AND CONCLUSIONS OF LAW.**

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

Case No. 13-O-10587 (Complainant: Camille Hawley)

**FACTS:**

1. In September 2010, Camille Hawley hired Respondent to prosecute a personal injury action on her behalf against the 99¢ Only Stores subsequent to a slip-and-fall accident in one of its retail stores located in Hawthorne, California on September 8, 2010.
2. On September 29, 2010, Respondent sent a letter to Ms. Hawley advising her that Respondent had commenced working on her matter. Ms. Hawley received the letter.
3. On September 29, 2010, Respondent's office sent a letter to the 99¢ Only Stores advising, among other things, that Respondent was representing Ms. Hawley.
4. After September 29, 2010, through and including November 22, 2011, Respondent made no attempt to settle Ms. Hawley's slip-and-fall case against the 99¢ Only Stores. Respondent did not make any effort to preserve testimony, take depositions or engage in other discovery, and she did not file suit on Ms. Hawley's behalf.
5. On November 23, 2011, Respondent prepared a letter addressed to the 99¢ Only Stores which stated, among other things, that Ms. Hawley had concluded her medical treatment and that Respondent was calendaring her file for thirty days during which time she expected to hear from the 99¢ Only Stores regarding settlement of Ms. Hawley's claim.
6. The 99¢ Only Stores did not respond to either Respondent's September 29, 2010 or November 23, 2011 letters.
7. The 99¢ Only Stores neither accepted nor denied liability for Ms. Hawley's claim.
8. After November 23, 2011, through and including December 2012, Respondent made no attempt to settle Ms. Hawley's slip-and-fall case against the 99¢ Only Stores and did not follow-up on her November 23, 2011 letter. Respondent made no efforts to preserve testimony, take depositions or engage in other discovery, and she did not file suit on Ms. Hawley's behalf.

9. Shortly after retaining Respondent, Ms. Hawley called Respondent's office in September 2010 to discuss her case with Respondent, but was advised by Respondent's staff that Respondent was presently unavailable but would return Ms. Hawley's call. Respondent did not return Ms. Hawley's call.

10. Every two to three months after September 2010, through and including December 2012, Ms. Hawley called Respondent's office to discuss her matter with Respondent. On each occasion Respondent's staff advised Ms. Hawley that Respondent was unavailable but that she would return Ms. Hawley's calls.

11. When Ms. Hawley called Respondent's office in December 2012, she also was advised by Respondent's staff that Respondent was "dropping" clients. Ms. Hawley requested written notification regarding whether Respondent had "dropped" her case. Ms. Hawley did not receive written notification as requested.

12. Respondent did not return any of Ms. Hawley's telephone calls at any time between September 2010, through and including December 2012. Respondent did not speak with Ms. Hawley about her matter at any time subsequent to Respondent's retention.

13. Respondent prepared a letter to Ms. Hawley dated July 5, 2012, which stated that Respondent was withdrawing as Ms. Hawley's attorney and would take no further action on Ms. Hawley's matter. The letter also stated that the statute of limitations for Ms. Hawley to file suit against the 99¢ Only Stores would expire on September 9, 2012.

14. Respondent's July 5, 2012 letter to Ms. Hawley was incorrectly addressed as it listed the wrong apartment number.

15. Ms. Hawley did not receive Respondent's July 5, 2012 letter.

16. Respondent did not effectively advise Ms. Hawley that Respondent had ceased working on her matter and that the statute of limitations on her matter was about to expire and had in fact expired.

#### CONCLUSIONS OF LAW:

17. By failing to make any attempts to settle Ms. Hawley's slip-and-fall case, to preserve testimony, to take depositions, to engage in other discovery, or to file suit on Ms. Hawley's behalf against the 99¢ Only Stores at any time after September 29, 2010, through and including November 22, 2011, and at any time after November 23, 2011, through and including December 2012, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

18. By failing to respond to Ms. Hawley's numerous telephone calls between September 2010 and through and including December 2012, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

#### AGGRAVATING CIRCUMSTANCES.

**Prior Record of Discipline (Std. 1.5(a)):** Respondent has a prior record of discipline that is both recent and serious in that it involved two separate client matters and included multiple acts of



misconduct involving the failure to promptly pay entrusted funds, the failure to perform legal services with competence, and the failure to respond to reasonable client inquiries. In an order that took effect on December 19, 2012, Respondent was suspended from the practice of law for one year, the suspension was stayed, and Respondent was placed on probation for three years with various terms and conditions including that she be actually suspended from the practice of law for ninety days. Respondent was given credit for one mitigating factor—eleven years of discipline free practice. However, two aggravating factors were found: multiple acts of misconduct and harm to one client resulting in the loss of the client's cause of action.

There is approximately a ten-month overlap between the misconduct in the prior disciplinary case, which involved misconduct from August 2009 through June 2012, and this matter, which involves misconduct from September 2011 through and including December 2012. Consequently, the weight given to this aggravating factor is somewhat diminished. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 [the aggravating force of prior discipline is diminished if the misconduct underlying it occurred during the same time period].)

**Harm (Std. 1.5(f)):** Respondent's conduct caused significant harm to Ms. Hawley as she lost her opportunity to pursue her case in court.

**Multiple Acts of Misconduct (Std. 1.5(b)):** Respondent's misconduct in the present matter involves multiple acts of professional misconduct. Respondent failed to communicate with Ms. Hawley on numerous occasions during the course of the representation and failed to handle Ms. Hawley's matter with competence.

#### **MITIGATING CIRCUMSTANCES.**

**Pretrial Stipulation:** Respondent has stipulated to facts, conclusions of law, and disposition in order to resolve her disciplinary proceedings as efficiently as possible, prior to trial, thereby avoiding the necessity of a trial and saving State Bar and State Bar Court 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].) By entering into this stipulation, Respondent has acknowledged her misconduct and demonstrated her willingness to conform to ethical responsibilities in the future.

#### **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 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.) 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).)

In this matter, Respondent admits to committing two acts of professional misconduct. Standard 1.7(a) requires that where an attorney “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 2.5, which applies to Respondent’s violation of rule 3-110(A) of the Rules of Professional. Standard 2.5(b) provides that: “Actual suspension is appropriate for failing to perform legal services or properly communicate in multiple client matters, not demonstrating a pattern of misconduct.”

Respondent has a prior record of discipline. Standard 1.8(a) requires that when an attorney “has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.” The burden is on Respondent to show that her prior discipline is remote and that the offense for which it was imposed was not serious. (See, *In re Silvertown*, *supra*, 36 Cal. 4th at p. 92.) Additionally, because Respondent’s current misconduct overlapped in time with her prior misconduct, Respondent’s current misconduct must be analyzed with the prior misconduct to determine what the level of discipline would have been if the two matters were resolved at the same time. (*In the Matter of Sklar*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 619.)

Respondent’s prior discipline is both recent and serious. The prior discipline became effective on December 19, 2012, included a 90-day actual suspension, and was imposed as a result of multiple acts of misconduct in two separate client matters. The misconduct in the prior matter occurred from August 2009 through June 2012. There is an approximate ten-month overlap between the misconduct in the prior disciplinary case and this matter, which involves misconduct from September 2011 through and including December 2012.

The misconduct in the prior discipline is generally the same type of misconduct that is alleged in the present case. In the prior discipline, Respondent was found culpable of violating Business and Professions Code section 6068(m) and rule 3-110(A) of the Rules of Professional Conduct in one client matter, and of violating rules 3-110(A) and 4-100(B)(4) of the Rules of Professional Conduct in the other client matter. In the instant case, Respondent admits to culpability for violating Business and Professions Code section 6068(m), and rule 3-110(A) of the Rules of Professional Conduct.

In the prior, Respondent was given credit for one mitigating factor—eleven years of discipline free practice. However, two aggravating factors were found: multiple acts of misconduct and harm to one client resulting in the loss of the client’s cause of action. Despite the overlap of time between the misconduct in the present matters and the misconduct in the prior discipline, the aggravating force of Respondent’s prior discipline is only slightly diminished, especially in light of the fact that here, as in

one of the client matters in the prior discipline, Respondent's failure to perform with competence resulted in the loss of Ms. Hawley's cause of action. Moreover, Respondent's misconduct in the instant matter continued for six additional months.

Respondent is entitled to mitigation for entering into this stipulation. However, this mitigation is not sufficiently compelling to warrant a deviation from Standard 2.5. When the magnitude of the misconduct committed herein is considered in conjunction with the significant aggravating circumstances and the minimal mitigating circumstance that are presented, and when the totality of Respondent's misconduct in the prior disciplinary matter and current matter is considered in light of the relevant Standards, a discipline consisting of a two-year suspension, stayed, and three years of probation, with conditions including six months of actual suspension is consistent with the Standards and will protect the public, the courts and the legal profession, maintain high professional standards, and preserve public confidence in the legal profession. Because Respondent was already actually suspended for ninety days in her prior disciplinary matter, an additional suspension of ninety days is appropriate now.

Case law also supports this level of discipline. In *Harris v. State Bar* (1990) 51 Cal. 3d 1082, 1089, the attorney who was found culpable of abandoning a single client over a four-year period, by failing to perform with competence and failing to communicate with and respond to reasonable client inquiries, received an actual period of suspension. The attorney in *Harris* was suspended for three years, stayed, and was placed on probation for three years with conditions including actual suspension from the practice of law for ninety days. The *Harris* court found that the attorney made no attempt to settle either the client's personal injury or wrongful death case, made no effort to preserve testimony, take depositions, engage in discovery, or vigorously prosecute the cases for which she had been retained. The attorney had no prior record of discipline, and although her illness was properly considered as a mitigating circumstance, the *Harris* court found that the illness began after the client complained to the attorney about his attempts to communicate with her, and that the illness did not excuse four years of neglect and failure to communicate. (*Id.* at 1088.)

Like the attorney in *Harris*, Respondent did virtually nothing for over two years to perform the duties for which she had been retained or to advance Ms. Hawley's interests against the 99¢ Only Stores. Additionally, Respondent also repeatedly failed to communicate with Ms. Hawley. Respondent's effective abandonment of Ms. Hawley and her matter was not just a single isolated incident involving a single client matter when viewed in the context of Respondent's prior discipline as discussed above. Consequently, Respondent's misconduct requires a greater period of actual suspension than that received by the attorney in *Harris* in order to adequately protect the public, the courts and the legal profession, maintain high professional standards, and preserve public confidence in the legal profession.

## **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>
13-O-10587	3	Business and Professions Code section 6106
13-O-10587	4	Business and Professions Code section 6106
13-O-10587	5	Business and Professions Code section 6106

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

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of May 20, 2014, the prosecution costs in this matter are approximately \$5,500. 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.)

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In the Matter of: Alana Gershfeld	Case number(s): 13-O-10587
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**SIGNATURE OF THE PARTIES**

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>6/2/14</u> Date	<u><i>Alana Gershfeld</i></u> Respondent's Signature	<u>Alana Gershfeld</u> Print Name
<u>6/2/14</u> Date	<u><i>Richard A. Moss</i></u> Respondent's Counsel Signature	<u>Richard A. Moss</u> Print Name
<u>June 3, 2014</u> Date	<u><i>Sherell N. McFarlane</i></u> Deputy Trial Counsel's Signature	<u>Sherell N. McFarlane</u> Print Name

(Do not write above this line.)

In the Matter of:  
Alana Gershfeld

Case Number(s):  
13-O-10587

### 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.

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

06-16-2014

  
RICHARD A. PLATEL  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 17, 2014, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION**

in a sealed envelope for collection and mailing on that date as follows:


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

**RICHARD ALAN MOSS  
255 S MARENGO AVE  
PASADENA, CA 91101 - 2719**

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

**SHERELL McFARLANE, Enforcement, Los Angeles  
TERRIE GOLDADE, Probation Dept., Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 17, 2014.

  
\_\_\_\_\_  
Tammy Cleaver  
Case Administrator  
State Bar Court