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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Sherrie B. McLetchie Senior Trial Counsel 180 Howard Street San Francisco CA 94105 (415) 538-2297 Bar # 85447	Case Number(s): 13-O-12153-PEM PUBLIC MATTER	For Court use only FILED OCT 28 2014 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Megan E. Zavieh 12460 Crabapple Rd Ste 202-272 Alpharetta GA 30004 (510) 936-1534 Bar # 206446	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: EVERITT GEORGE BEERS Bar # 92505 A Member of the State Bar of California (Respondent)		

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:

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- (1) Respondent is a member of the State Bar of California, admitted May 30, 1980.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 14 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
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ Dishonesty: Respondent's misconduct was 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.
- (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.

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- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See Stipulation Attachment, Page 10.
- (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. See Stipulation Attachment, page 11.
- (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.

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(13) ☐ No mitigating circumstances are involved.

Additional mitigating circumstances:

See, Stipulation Attachment, Page 11.

No Prior Discipline

Remorse

Physical Disabilities

Pretrial Stipulation

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 **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 **six (6) months**.

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:

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- (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.
- (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:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

(Effective January 1, 2014)

Actual Suspension

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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 5.152(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:**

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In the Matter of: EVERITT GEORGE BEERS	Case Number(s): 13-O-12153-PEM
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Financial Conditions

a. Restitution

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

Payee	Principal Amount	Interest Accrues From

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

b. Installment Restitution Payments

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

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

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

c. Client Funds Certificate

- ☒ 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- 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";

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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.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: EVERITT GEORGE BEERS

CASE NUMBER: 13-O-12153-PEM

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. 13-O-12153-PEM (Complainant: Paul Vapnek, Esq. obo Milyoni, Inc.)

FACTS:

1. From December 21, 2011, through November 15, 2012, on five occasions respondent billed for and received from respondent's client, Milyoni Inc., advanced costs totaling \$2,600 for filing fees to be paid to the United States Patent and Trademark Office ("USPTO") for eight trademark applications (Celebrity Cinema, Social Antics, Crusher [twice], Movies with Milyoni, Movies with Friends, Cinema with Friends, and Concerts in the Cloud). Respondent did not deposit any of the \$2,600 in advanced costs in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import.

2. Thereafter, respondent misappropriated for respondent's own purposes the \$2,600 advanced costs received from client Milyoni, Inc.

3. On November 19, 2012, respondent submitted a list to Milyoni Inc. representing that respondent had prepared and filed the eight trademark applications with the USPTO when respondent knew that he had not prepared and filed the eight trademark applications.

4. From December 21, 2011, through November 15, 2012, respondent received advanced fees of \$5,005 from Milyoni Inc. for preparing and filing the eight trademark applications with the USPTO. Respondent performed no services of value on behalf of the client in regard to the eight trademark applications which were in fact not filed with the USPTO and therefore earned none of the advanced fees paid. Respondent did not refund promptly, upon the client's request in March 2013, any part of the \$5,005 fee.

5. On April 15, 2013, counsel for Milyoni, Inc. submitted a complaint against respondent to the State Bar.

6. Respondent failed to provide any substantive response to the State Bar's letter of May 1, 2013, which respondent received, that requested respondent's response to the allegations of misconduct being investigated in case number 13-O-12153.

7. Before August 7, 2013, respondent vacated the mailing address maintained on the official membership records of the State Bar and thereafter did not notify the State Bar of the change in respondent's address within 30 days.

8. On March 3, 2014, respondent refunded \$7,605 to Milyoni, Inc.

9. On May 5, 2014, respondent remitted \$1,154.88 to Milyoni, Inc. as interest on the unused advanced costs and unearned fees refunded on March 3, 2014.

CONCLUSIONS OF LAW:

10. By failing to deposit any of the \$2,600 in advanced costs received from client Milyoni, Inc. in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, respondent willfully violated Rules of Professional Conduct, 4-100(A).

11. By misappropriating \$2,600 advanced costs received from Milyoni, Inc., respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

12. By submitting a false list to Milyoni Inc. representing that respondent had prepared and filed eight trademark applications with the USPTO when respondent knew that he had not, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

13. By failing to refund promptly, upon the client's request in March 2013, any part of the unearned \$5,005 fee, respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2).

14. By failing to cooperate in a disciplinary investigation pending against him by failing to provide any substantive response to the State Bar's letter of May 1, 2013, respondent willfully violated Business and Professions Code, section 6068(i).

15. By failing to notify the State Bar of the change in respondent's address within 30 days, respondent willfully violated Business and Professions Code, section 6068(j).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): On five occasions between December 21, 2011, through November 15, 2012, respondent billed for and received from respondent's client, Milyoni Inc., advanced costs and fees for eight trademark applications which he did not in fact file or prepare. On November 19, 2012, respondent submitted to Milyoni, Inc. a list of work purportedly performed which included eight fictitious USPTO application filing numbers. In addition, respondent did not promptly refund the unearned fees, did not cooperate with the State Bar's investigation, and did not notify the State Bar of his change of address within 30 days. Respondent's nine acts of misconduct constitute multiple acts of misconduct.

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MITIGATING CIRCUMSTANCES.

Family Problems: In the autumn of 2012, respondent's wife suffered a serious biking accident in which she shattered a shoulder and required extensive surgery to implant a metal plate to hold nine broken bone pieces together. After her release from the hospital, respondent was his wife's primary caregiver. In May 2013 respondent's 94-year-old father who was responsible for respondent's developmentally disabled sister – both of whom reside in Alaska – fell and broke his hip requiring surgery. Respondent's father had to be hospitalized and was no longer able to supervise respondent's disabled sister. Thereafter, respondent had to make several trips to Alaska to oversee care for his father and sister. Respondent petitioned to become co-guardian of his disabled sister and was appointed in November 2013. (See *Pineda v. State Bar* (1989) 49 Cal.3d 753, 760 [personal problems culminating in marital dissolution during the period in which the misconduct occurred found mitigating].)

ADDITIONAL MITIGATING CIRCUMSTANCES:

No Prior Discipline: Although respondent's misconduct is serious, he is entitled to mitigation for having practiced law for 31 ½ years without discipline prior to the misconduct in this case. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Remorse: Respondent sought and obtained psychological counseling regarding his misappropriation and misrepresentations to his client prior to being contacted by the State Bar, and within two weeks of being confronted by the client, demonstrating remorse and recognition of wrongdoing, which steps were designed to atone for the consequences of his misconduct. His psychologist has opined that he will not reoffend. Respondent also has attended Lawyer Assistance Program meetings, and made full restitution – albeit not spontaneously – all of which is concrete evidence of that remorse. (*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 626-627 [combination of cooperating with the State Bar, demonstrating remorse and accepting responsibility for one's wrongdoing, and taking steps to repair the damage done to prevent its reoccurrence considered as mitigating].)

Physical Disabilities: On or about August 22, 2011, evidence of cancer was first detected in respondent after his hospitalization for injuries suffered in a biking accident. As a result of the accident, respondent suffered chest injuries (which required placement of a tube in the chest wall) and a fractured collarbone. Cancer was confirmed and treatment for that condition began in September 2011, including nuclear medicine (implantation of radioactive "seeds" in or near the tumor), surgery, and chemotherapy. As of August 3, 2012, medical records reflect "no clinical evidence of recurrent disease". Cancer treatment and monitoring continued at least through July 2014. (See *In re Brown* (1995) 12 Cal.4th 205, 222 [although attorney offered no expert testimony to establish that illness during part of the time misconduct occurred was directly responsible for misconduct, some mitigating weight given].)

Pretrial Stipulation: Respondent has entered into this stipulation as to facts, conclusions of law, and disposition with the Office of the Chief Trial Counsel prior to trial. (*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].)

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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, supra*, at 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 six acts of professional misconduct. 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 2.1(a), which applies to respondent's violation of Business and Professions Code section 6106 by his misappropriation of \$2,600.

Standard 2.1(a) provides that "Disbarment is appropriate for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case actual suspension of one year is appropriate."

In this case, deviation from standard 2.1(a) is appropriate because \$2,600 intentionally misappropriated from a corporation was insignificantly small (*Kelly v. State Bar* (1991) 53 Cal.3d 509, 519-520 [loss of \$2,000 for six weeks is not grievous]; *Howard v. State Bar* (1990) 51 Cal.3d 215, 223 [\$1,300 considered "relatively small sum"] and compelling mitigating circumstances clearly predominate. Here, respondent's 31 ½ years of discipline-free practice, serious medical condition, and extreme treatment therefor while experiencing family problems, were contemporaneous with his misconduct over a one-year period. Respondent also obtained counseling before contact from the State Bar, has expressed remorse and demonstrated it via full restitution, and his psychologist has expressed confidence that his misconduct will not reoccur.

Standard 1.1 expressly recognizes that deviation can be appropriate with "clear reasons for the departure". In *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029, the Supreme Court cited *Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132-133, as follows: "When misconduct occurs during a single period of aberrant behavior, an attorney's past discipline-free record is recognized as a factor that suggests that disbarment is not a necessary or appropriate sanction." In *Chefsky*, a multiple-client matter, the attorney made a false statement to a court amounting to moral turpitude, failed to perform and communicate, and misappropriated a \$100 filing fee, among other things, was suspended for 30 days and ordered to pay \$100 in restitution. The Supreme Court found the State Bar's five-year delay in prosecution, Chefsky's 20 years in practice before the misconduct started, his unspecified illness during much of the period in question, and the loss of his secretary to be mitigating. In *In the Matter of Lawrence* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239, the Review Department recommended an 18-month actual suspension from the practice of law for an attorney who had been disciplined four times previously and in his fifth discipline case was found culpable of misappropriating \$800 over a four-month period, among other misconduct. Lawrence had suffered from a chronic medical condition, but also had more recently suffered a traumatic brain injury and a craniotomy. The Review Department found that Lawrence's extreme physical disabilities established the most compelling mitigating circumstances and supported deviation from the Standards.

Similar to Chefsky, respondent's 31 ½ years of discipline-free practice, serious medical condition, and extreme treatment therefor while experiencing family problems, were contemporaneous with his misconduct over a one-year period. The purposes of attorney discipline: 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 will be satisfied by a two-year stayed, two-year probation conditioned on a six-month actual suspension from the practice of law with the concomitant rule 9.20 requirement, and a requirement that if respondent holds entrusted funds, he or a certified public accountant will certify his compliance with the required CTA handling procedures.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 14, 2014, the prosecution costs in this matter are \$7,280. 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

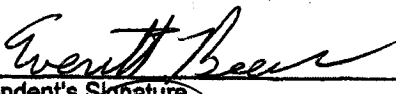
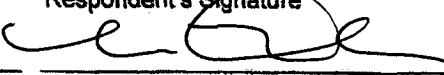
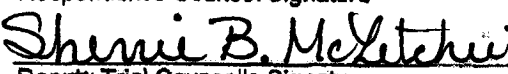
Respondent may not receive Minimum Continuing Legal Education credit for completion of State Bar Ethics School or State Bar Client Trust Accounting School to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: EVERITT GEORGE BEERS	Case number(s): 13-O-12153-PEM
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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>10/22/14</u> Date	 Respondent's Signature	<u>Everitt George Beers</u> Print Name
<u>10/16/2014</u> Date	 Respondent's Counsel Signature	<u>Megan E. Zavieh</u> Print Name
<u>10/23/14</u> Date	 Deputy Trial Counsel's Signature	<u>Sherrie B. McLetchie</u> Print Name

(Do not write above this line.)

In the Matter of: EVERITT GEORGE BEERS	Case Number(s): 13-O-12153
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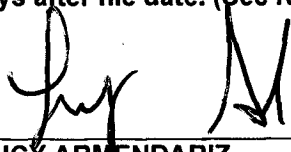
ACTUAL SUSPENSION ORDER

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.)**

Oct 28, 2014
Date



LUCY ARMENDARIZ
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 October 28, 2014, 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:

MEGAN E. ZAVIEH
12460 CRABAPPLE RD STE 202-272
ALPHARETTA, GA 30004

- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- ☐ by overnight mail at , California, addressed as follows:


- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Sherrie McLetchie, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 28, 2014.


George Hae
Case Administrator
State Bar Court