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State Bar Court of California  
Hearing Department  
Los Angeles  
ACTUAL SUSPENSION

<p>Counsel For The State Bar</p> <p><b>Sue Hong</b> Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1161</p> <p>Bar # 285852</p>	<p>Case Number(s): 13-O-14012-LMA 13-O-14747 14-O-01001</p>	<p>For Court use only</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b></p> <p>APR - 1 2015</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p><b>Thomas J. Bayard</b> 20651 Golden Springs Dr # 240 Diamond Bar, CA 91789 (909) 860-0900</p> <p>Bar # 226247</p>	<p>Submitted to: <b>Assigned 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: <b>THOMAS JAMES BAYARD</b></p> <p>Bar # 226247</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 **August 13, 2003**.
- (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 **17** 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."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



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- (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: **three 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 [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-15120, et al.**
  - (b)  Date prior discipline effective : **November 16, 2012**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Respondent stipulated that he failed to perform legal services competently (RPC 3-110(A)), refund unearned fees (RPC 3-700(D)(2)), account for client funds (4-100(B)(3)), communicate with a client (B&P Code 6068(m)), and cooperate with the bar's investigation (B&P Code 6068(i)).**
  - (d)  Degree of prior discipline : **Respondent was suspended for two years, stayed, and placed on four years of probation with a 60-day actual suspension.**
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
    - (i) State Bar Case No.: 10-O-02913, et al.
    - (ii) Date prior discipline effective: January 11, 2012
    - (iii) Rules of Professional Conduct/State Bar Act violations: Respondent's misconduct included failures to perform legal services competently (RPC 3-110A), respond to clients' reasonable status inquiries (B&P Code 6068(m)), refund unearned fees (RPC3-700(D)(2)), return client files (RPC 3-700(D)(1)), cooperate with the bar's investigation (B&P Code 6068(i)), and he filed an action without authority (B&P Code 6104)).
    - (iv) Degree of prior discipline: Respondent was suspended for two years, stayed, placed on four years of probation with a 60-day actual suspension and was ordered to take the MPRE within one year.
- (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.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Attachment on Page 13.**
- (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.

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- (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.
- (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 Attachment at Page 13.**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **three (3) 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 **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 1.2(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: **Pays restitution as set forth in the Attachment on page 15.**

### 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.
- (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: **In Case No. 10-O-02913 (S196023), respondent was previously ordered to complete and provide proof of attendance of Ethics School, with which respondent timely complied by the due date of January 11, 2013.**
- (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 type="checkbox"/> Financial Conditions             |

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

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without 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: **In Case No. 10-O-02913 (S196023), respondent was previously ordered to complete and provide proof of attendance of passage of the MPRE, with which respondent timely complied by the due date of January 11, 2013.**
- (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: See Restitution Attachment on page 15.**



- e. to pay restitution to Lorraine Minick in the principal amount of \$36,500 and to pay restitution to Terry Thompson in the principal amount of \$32,000, at a minimum payment amount of \$4,900 per quarter until paid in full, and with each written quarterly report required, respondent must provide the Office of Probation satisfactory proof of all restitution payments made by respondent during that quarter or applicable reporting period, and such proof must be in a form satisfactory to the Office of Probation; and
- f. within ten (10 ) days from the effective date of discipline in these matters, respondent shall send clients Victor and Linda Lopez, and David Brien or his counsel, a letter, notifying them that respondent is required by court order to initiate, pay for, and participate in State Bar Mandatory Fee Arbitration, and that the purpose of the arbitration is to determine whether respondent had earned all fees and/or costs paid by the client to respondent in the matter.

6. On December 12, 2011, the Clerk of the California Supreme Court properly served upon respondent a copy of the Disciplinary Order. Respondent received the Disciplinary Order.

7. The Disciplinary Order became effective on January 11, 2012.

8. On January 17, 2012, a Probation Deputy from the Office of Probation of the State Bar of California sent a courtesy reminder letter to respondent. In that letter, the Probation Deputy reminded respondent of the terms and conditions of his probation imposed pursuant to the Disciplinary Order and specifically reminded respondent of the Fee Arbitration conditions, quarterly reports deadlines, and restitution conditions to clients.

9. On August 22, 2012, the Probation Deputy sent an additional courtesy reminder letter to respondent. In the letter, the Probation Deputy reminded respondent of the terms and conditions of his probation imposed pursuant to the Disciplinary Order. The letter specifically informed respondent that he had not filed his quarterly reports which were due April 10, 2012 and July 10, 2012, provided proof that respondent offered Fee Arbitration to the Lopez's by January 21, 2012; and that he had not provided proof of full restitution to Academia and Keller which was due by April 11, 2012.

10. Respondent failed to timely submit the Fee Arbitration letter to Victor and Linda Lopez by the due date of January 21, 2012. Respondent belatedly submitted the Fee Arbitration letter to the Lopez's on December 13, 2013.

11. Respondent failed to submit a quarterly report due on April 10, 2012.

12. Respondent failed to timely submit a quarterly report by its due date of July 10, 2012. Respondent belatedly submitted the report on October 10, 2012.

13. Respondent failed to timely fully pay restitution to Academia and Keller by April 11, 2012. Respondent belatedly paid full restitution to Academia on May 25, 2013, and to Keller, on December 14, 2012.

14. Respondent failed to fully submit proof of restitution to the Office of Probation on a quarterly basis regarding the receipt of restitution payments to Minick and Thompson by July 10, 2012, October 10, 2012, January 10, 2013, April 10, 2013, October 10, 2013, January 10, 2014, April 10, 2014, and July 10, 2014.

15. Respondent provided proof of one quarterly restitution payment in the amount of \$4,900 to Minick on July 22, 2013. Respondent also provided proof of one quarterly payment in the amount of \$4,900 to Thompson on July 22, 2013.

16. Respondent timely complied with the MPRE and Ethics School requirements by January 11, 2013.

#### CONCLUSIONS OF LAW:

17. By failing to timely submit the Fee Arbitration letter to Victor and Linda Lopez by the due date of January 21, 2012, submit a quarterly report due on April 10, 2012, timely submit a quarterly report by its due date of July 10, 2012, fully pay restitution to Herminio Academia and Donna Keller by April 11, 2012, and pay restitution on a quarterly basis to Lorraine Minick and Terry Thompson by July 10, 2012, October 10, 2012, January 10, 2013, and April 10, 2013, respondent failed to comply with conditions attached to respondent's disciplinary probation in State Bar Case Nos. 10-O-02319, et al., in willful violation of Business and Professions Code, section 6068(k).

#### Case No. 13-O-14747 (Complainant: Aurelia Villa)

#### FACTS:

18. On October 2, 2012, respondent Thomas Bayard ("respondent") represented and appeared at a hearing on behalf of Ms. Aurelia Villa, in an unlawful detainer action against Villa entitled, *Wells Fargo Bank v. Villa*, Case No. 12-U-03054, in the Los Angeles County, Superior Court ("unlawful detainer action").

19. Respondent failed to inform Villa that a hearing was scheduled to take place on October 2, 2012, in the unlawful detainer action.

20. At the hearing on October 2, 2012, respondent entered into a stipulation with plaintiff Wells Fargo Bank, on behalf of Villa, and without Villa's authorization or consent, in the unlawful detainer action. Respondent stipulated that Villa would vacate the premises and abandon her personal belongings and property by November 2, 2012.

21. At the hearing on October 2, 2012, respondent represented to the Court, in the unlawful detainer action, that he had the authorization and consent of Villa to enter into the stipulation.

22. Respondent failed to inform Villa that in the unlawful detainer action, respondent entered into a stipulation with Wells Fargo Bank, on behalf of Villa, in which Villa would be required to vacate the premises and abandon her personal property by November 2, 2012.

23. On July 13, 2012, respondent filed a voluntary Chapter 13 petition, on behalf of Villa, entitled *In re Aurelia Alexandra Villa*, United States Bankruptcy Court, Central District of California, Case No. 2:12-bk-34278-NB ("the bankruptcy action").

24. On February 5, 2013, in the bankruptcy action, the United States Trustee filed a Trustee's Notice of Motion and Motion to Disgorge Fees of Attorney Thomas Bayard, alleging that respondent had not complied with the Federal and Local Bankruptcy Rules regulating attorney fees.

25. On November 14, 2013, respondent entered into a written agreement with the United States Trustee to return \$8,000.00 to the United States Trustee in the bankruptcy action.

26. On December 19, 2013, the Bankruptcy Court ordered respondent to return \$8,000.00 to the United States Trustee, within 90 days of the entry of the Order. Respondent has not returned the \$8,000.00 to the United States Trustee.

27. Effective November 16, 2012, to February 15, 2013, respondent was not entitled to practice law as he was suspended for a disciplinary offense in State Bar Case no. 11-O-15120.

28. In a text message from Villa to respondent, sent on November 20, 2012, Villa asked respondent to let her know what happened in court. In that text message, Villa also advised respondent that Wells Fargo Bank's agent, Mr. Silverstein, had emailed her to get out of the property. Respondent responded to Villa on the same date, via text message, and told Villa: "We are not going to have a ruling until this afternoon, I will get a hold of Silverstein today, the office staff is there but not answering the phone." Respondent never disclosed to Villa that he was suspended or not entitled to practice law.

29. In another text message sent by respondent to Villa, on November 20, 2012, respondent told Villa: "I have been in a meeting all morning but will give you a call this afternoon, we have been working directly with the judge's clerk regarding the summons and the hearing, we will be in court on Monday, we can discuss further when we talk this afternoon." Respondent never disclosed to Villa that he was suspended or not entitled to practice law.

#### CONCLUSIONS OF LAW:

30. By failing to keep Villa, reasonably informed of a hearing that was scheduled to take place on October 2, 2012, in the unlawful detainer action against Villa, and of the stipulation that respondent had entered into with Wells Fargo Bank on behalf of Villa, without Villa's prior authorization or consent, respondent failed to keep respondent's client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

31. By representing to the Court on October 2, 2012, in the unlawful detainer action, that respondent had the authorization and consent of his client, Villa, to enter into the stipulation when in fact, respondent did not have the authorization and consent of his client to enter into the stipulation, and respondent knew the statement was false, respondent sought to mislead the judge by a false statement of fact, in willful violation of Business and Professions Code, section 6068(d).

32. By failing to comply with the December 19, 2013, Bankruptcy court order, ordering respondent to pay the United States Trustee \$8,000 in disgorged fees, in the bankruptcy action, respondent disobeyed or violated an order of the court requiring respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear, in willful violation of Business and Professions Code, section 6103.

33. By text messaging Villa on November 20, 2012, regarding the legal actions he had been taking on her behalf and those legal actions he would be taking that day on her behalf, respondent held himself out as entitled to practice law when respondent was not an active member of the State Bar, in violation of Business and Professions Code, sections 6125 and 6126, and thereby willfully violated Business and Professions Code, section 6068(a).

34. By text messaging Villa on November 20, 2012, regarding the legal actions he had been taking on her behalf and those legal actions he would be taking that day on her behalf, respondent held himself out as entitled to practice law when respondent knew that he was not an active member of the State Bar, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

Case No. 14-O-01001 (Probation Violation)

FACTS:

35. On May 29, 2012, respondent Thomas J. Bayard ("respondent") entered into a Stipulation Re Facts, Conclusions of Law and Disposition ("Stipulation") with the State Bar of California in case no. 11-O-15120 et al.

36. On June 21, 2012, the Hearing Department of the State Bar Court filed an Order Approving the Stipulation and recommending to the California Supreme Court the discipline set forth in the Stipulation.

37. On June 21, 2012, the Hearing Department's June 21, 2012, Order Approving the Stipulation was properly served by mail upon the respondent. Respondent received the order.

38. On October 17, 2012, the California Supreme Court filed an Order in case no. S204624 (State Bar case no. 11-O-15120 et al.) that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that respondent be placed on probation for four years subject to conditions including that respondent be actually suspended for the first 60 days of probation ("Disciplinary Order").

39. Pursuant to the Disciplinary Order, respondent was ordered to comply with the following relevant terms and conditions of probation, among others:

- a. To comply with the State Bar Act, Rules of Professional Conduct, and all conditions of probation;
- b. to contact the Office of Probation within thirty (30) days after the effective date of the Disciplinary Order to schedule a meeting with his probation deputy;
- c. to pay restitution to Eloise Lee in the principal amount of \$8,400 plus interest of 10% per annum accruing from November 9, 2009, to pay restitution to Vesta Waltower in the principal amount of \$1,500 plus interest of 10% per annum accruing from August 9, 2010, to pay restitution to Mary Medina in the principal amount of \$9,500 plus interest of 10% per annum accruing from March 1, 2010, and submit satisfactory proof of same to the Office of Probation no later than one year after the effective date of the Disciplinary Order; and

- d. to submit to the Office of Probation quarterly reports each January 10, April 10, July 10, and October 10.

40. On October 17, 2012, the Clerk of the California Supreme Court properly served upon respondent a copy of the Disciplinary Order. Respondent received the Disciplinary Order.

41. The Disciplinary Order became effective on November 16, 2012.

42. On December 26, 2012, a Probation Deputy from the Office of Probation of the State Bar of California sent a courtesy reminder letter to respondent. In that letter, the Probation Deputy reminded respondent of the terms and conditions of his probation imposed pursuant to the Disciplinary Order and specifically reminded respondent of the requirements to contact and schedule a meeting with the probation deputy by December 16, 2012, and that payment of restitution in full was due on or before November 16, 2013. The courtesy reminder letter also reminded the respondent to file quarterly reports commencing January 10, 2013, with the final report due on or before November 16, 2014.

43. On January 31, 2014, the Probation Deputy mailed another courtesy reminder letter to respondent, reminding him of the terms and conditions of his probation pursuant to the Disciplinary Order. Respondent received the letter.

44. Respondent failed to contact the Office of Probation and schedule a meeting by December 16, 2012.

45. Respondent failed to timely submit a quarterly report due on January 10, 2014. Respondent submitted the report on January 15, 2014.

46. Respondent failed to timely pay full restitution to Vesta Waltower, Mary Medina, and Eloise Lee. Respondent belatedly paid full restitution to Waltower and Medina on September 11, 2014.

#### CONCLUSIONS OF LAW:

47. By failing to contact the Office of Probation and schedule a meeting by December 16, 2012, timely submit the quarterly report due on January 10, 2014, and pay full restitution by the due date of November 16, 2013 to Waltower, Medina, and Lee, respondent failed to comply with conditions attached to respondent's disciplinary probation in State Bar case no. 11-O-15120 et al., in willful violation of Business and Professions Code, section 6068(k).

#### AGGRAVATING CIRCUMSTANCES.

##### **Prior Record of Discipline (Std. 1.5(a)):**

State Bar Case Nos. 10-O-02913; 10-O-05117; 10-O-05773; 10-O-07850; 10-O-08797; 10-O-08798; 10-O-11322:

Between April 2007 and July 2010, respondent engaged in misconduct in seven different client matters. Respondent stipulated to 13 counts of misconduct which included failures to perform legal services competently, respond to clients' reasonable status inquiries, refund unearned fees, return client files or cooperate with the bar's investigation, and filing an action without authority. Respondent was

suspended for two years, stayed, placed on four years of probation with a 60-day actual suspension and was ordered to take the MPRE within one year. The order took effect Jan. 11, 2012.

State Bar Case Nos. 11-O-15120; 11-O-15204; 11-O-18131; 12-O-10452; 12-O-12555:

Between March 2009 and December 2010, respondent engaged in misconduct in five client matters. Respondent stipulated to 12 counts of misconduct which occurred at the same time as other misdeeds for which he was disciplined in State Bar Case Nos. 10-O-02913 et al. Respondent stipulated that he failed to perform legal services competently, refund unearned fees, account for client funds, communicate with a client, and cooperate with the bar's investigation. Respondent was suspended for two years, stayed, and placed on four years of probation with a 60-day actual suspension. The order took effect Nov. 16, 2012.

#### **Multiple Acts of Misconduct (Std. 1.5(b)):**

In Case Nos. 13-O-14012 and 14-O-01001, respondent failed to comply with several terms of his probation. In 13-O-14747, respondent committed multiple acts of misconduct including Failure to Keep Client Reasonably Informed of a Significant Development (6068(m)), Seeking to Mislead a Judge (6068(d)), Failure to Obey a Court Order (6103), Unauthorized Practice of Law (6068(a)/6125), and Moral Turpitude (6106). These multiple acts of wrongdoing constitute an aggravating circumstance under Standard 1.5(b).

#### **MITIGATING CIRCUMSTANCES.**

**Pretrial Stipulation:** Respondent is entitled to mitigation by entering into a stipulation of facts and conclusions of law prior to trial, thereby preserving 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].) However, the weight of mitigation is very limited as respondent has entered into the stipulation on the eve of trial.

#### **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).)

Standard 1.7(a) states that, “If a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.” Here, Standard 2.8(a) prescribes the most severe sanction. Standard 2.8(a) provides that, “Disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the member’s practice of law, the attorney’s oath, or the duties required of an attorney under Business and Professions Code section 6068(a)-(h).” Respondent’s misconduct involves violations of his conditions of his probation as well as misleading the court, failing to comply with a court order, failing to inform client of a significant development, and engaging in the unauthorized practice of law, which involves an act of moral turpitude. Standard 2.7 states that, “Disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member’s practice of law.”

Standard 1.8(a) states that, “If a member 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.

Although respondent has two prior records of discipline in California, the misconduct involved in respondent’s prior disciplinary matters, State Bar Case Nos. 10-O-02913, et al., occurred between April 2007 and July 2010. In respondent’s prior State Bar Case Nos. 11-O-15120, et al., respondent engaged in misconduct between March 2009 and December 2010, which was contemporaneous with the misconduct in respondent’s prior cases in Case Nos. 10-O-02913, et al. Therefore, it was appropriate to “consider the totality of the charges brought in both cases in order to determine the appropriate discipline, had both cases been brought together.” (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618). In Case Nos. 10-O-02913, et al. respondent received a two year suspension, stayed, four years of probation with a 60-day actual suspension. In Case Nos. 11-O-15120, et al. respondent also received a two year suspension, stayed, four years of probation with a 60-day actual suspension. If Case Nos. 11-O-15120, et al. been brought together with Case Nos. 10-O-02913, et al., the level of discipline would have likely resulted in the same discipline, totaling 120 days of actual suspension. Further, because we are treating discipline in Case Nos. 10-O-02913, et al. and 11-O-15120, et al. as if they had been brought together as one case, Standard 1.8(a) applies. Therefore, pursuant to Standard 1.8(a), the discipline here must be greater than the sanction imposed previously in Case Nos. 10-O-02913, et al., and Case Nos. 11-O-15120, et al.

Further, in aggravation, respondent has engaged in multiple acts of misconduct. Although respondent has entered into a pretrial stipulation, the weight of mitigation is very limited as respondent has entered into a stipulation on the eve of trial. Therefore, a significant actual suspension is warranted in the present case.

Here, although belatedly, respondent has complied with significant conditions of his probation such as payment of full restitution to four complaining witnesses and partial restitution payment to two complaining witnesses. In regard to the late quarterly reports, respondent came into compliance belatedly, and complied with all other terms of probation, such as taking and passing the MPRE and the completion of Ethics School. This would suggest that respondent has shown an ability and willingness to conform his conduct to his ethical responsibilities. Therefore, although a significant actual suspension is appropriate, it is not necessary to implement the standard 1.2(c)(1) requirement of rehabilitation.

In consideration of standards 1.8(a), 1.7(a), 2.7 and 2.8(a), the nature of respondent's misconduct, and the aggravating and mitigating circumstances discussed above, a three years' stayed suspension, three years' probation with conditions, including a one year actual suspension, and until full restitution is made, is appropriate to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.

This level of discipline is also consistent with case law. In *Levin v. State Bar* (1989) 47 Cal.3d 1140, the Supreme Court of California placed the attorney on three years' stayed suspension, and six months of actual suspension after finding that the attorney made false statements of fact to opposing counsel during settlement, settled a second lawsuit without his client's permission, and failed to deliver the settlement funds to the client. The Court considered Levin's multiple acts of misconduct which mitigated the effect of his eighteen years of discipline-free practice. In the present matter, respondent's misconduct is more egregious as he not only misled the court, but also practiced while he suspended for prior misconduct. Further, respondent has a prior discipline, unlike *Levin*. Therefore, a higher level of discipline is warranted here.

#### **ADDITIONAL RESTITUTION:**

Respondent must pay restitution to the following individuals in the amounts set forth below:

<b>Case Number</b>	<b>Party Owed</b>	<b>Principal Amount</b>
10-O-02913	Lorraine Minick	\$36,500
10-O-05773	Terry Thompson	\$32,000
11-O-18131	Eloise Lee	\$8,400 (plus interest of 10% annum accruing from November 9, 2009)

Respondent must pay the above-referenced restitution to the parties at a minimum payment amount of \$4,900 per quarter until paid in full.

Restitution must be paid to each party as set forth on a quarterly, rotating basis and commencing within the second quarter following the effective date of discipline in these matters, starting with the first party on the list. After payments have been made, in turn, to each party on the list above, respondent will again make payment to the first and then second party on the list, and continue in such a manner until all the principal owed to each party is paid in full.

With each written quarterly report required herein, respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by respondent during that quarter or applicable reporting period. Such proof must be in a form satisfactory to the Office of Probation.

To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payment(s) provided satisfactory proof of such payment(s) is or has been shown to the Office of Probation.

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

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 24, 2015, the prosecution costs in this matter are approximately \$16,254. 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**

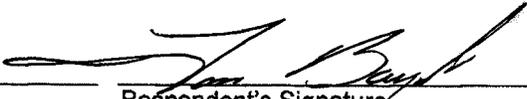
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion any other educational course(s) to be ordered as a condition of reapproval or suspension.

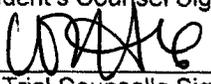
(Do not write above this line.)

In the Matter of: THOMAS JAMES BAYARD	Case number(s): 13-O-14012, 13-O-14747, 14-O-01001-LMA
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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.

3/20/15  \_\_\_\_\_  
Date Respondent's Signature Print Name  
THOMAS JAMES BAYARD

\_\_\_\_\_  
Date Respondent's Counsel Signature Print Name  
3/23/15  \_\_\_\_\_  
Date Deputy Trial Counsel's Signature Print Name  
SUE HONG

(Do not write above this line.)

In the Matter of: THOMAS JAMES BAYARD	Case Number(s): 13-O-14012, 13-O-14747, 14-O-01001-LMA
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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.)**

Date April 1, 2015

  
\_\_\_\_\_  
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 April 1, 2015, 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:

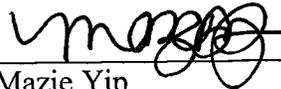
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

THOMAS J. BAYARD  
20651 GOLDEN SPRINGS DR # 240  
DIAMOND BAR, CA 91789

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

SUE K. HONG, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 1, 2015.



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Mazie Yip  
Case Administrator  
State Bar Court