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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Drew Massey Deputy Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017-2525 Tel: (213) 765-1204 Bar # 244350	Case Number(s): 13-O-16794-YDR 14-O-03470	For Court use only <div style="font-size: 1.5em; font-weight: bold; margin-bottom: 10px;">FILED</div> <div style="font-size: 1.2em; font-weight: bold; margin-bottom: 10px;">FEB 27 2015</div> <div style="font-size: 1.5em; font-weight: bold; margin-bottom: 10px;">P.B.</div> STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent David M. Liberman Law Office of David Liberman 9709 Venice Blvd. Apt. 4 Los Angeles, CA 90034 Tel: (424) 298-8648 Bar # 108469	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: David Mark Liberman Bar # 108469 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:

- (1) Respondent is a member of the State Bar of California, admitted **June 3, 1983**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **15** pages, not including the order.
- (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: **three consecutive years following the effective date of discipline.** (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.

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- (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, page 12.**
- (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.
- (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.

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- (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:

No prior discipline, see attachment, page 12. Pretrial stipulation, see attachment, page 12.

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 **sixty (60) days**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(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.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

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- (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:

- (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**

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further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.

No MPRE recommended. Reason:

- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

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In the Matter of:
DAVID MARK LIBERMAN

Case Number(s):
13-O-16794; 14-O-03470

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:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

<u>Check Date</u>	<u>Check #</u>	<u>Payee</u>	<u>Check Amount</u>
8/13/2013	1060	Respondent	\$500
8/18/2013	1061	Respondent	\$300
8/24/2013	1064	Respondent	\$350
8/27/2013	1065	Respondent	\$250
8/28/2013	1066	Respondent	\$100
8/13/2013	1067	Respondent	\$1000
9/21/2013	1071	Respondent	\$1000
9/26/2013	1072	Respondent	\$200
9/27/2013	1073	Respondent	\$1500
9/27/2013	1074	Respondent	\$1000
9/28/2013	1075	Respondent	\$1000
9/28/2013	1076	Respondent	\$1000
10/4/2013	1077	Respondent	\$2000
10/5/2013	1078	Respondent	\$2000
10/6/2013	1079	Respondent	\$2000
10/6/2013	1080	Dr. Bhuta	\$1,000
10/6/2013	1081	Respondent	\$1500
10/9/2013	1082	Respondent	\$1000
10/7/2013	1083	Respondent	\$1000
10/10/2013	1084	Respondent	\$1000
10/10/2013	1085	Respondent	\$1500
10/14/2013	1086	Respondent	\$1500
10/17/2013	1088	Respondent	\$4600
10/18/2013	1089	Respondent	\$500
10/18/2013	1090	Respondent	\$500
10/23/2013	1091	Respondent	\$200
10/18/2013	1092	Respondent	\$770
10/29/2013	1093	Respondent	\$1000
11/6/2013	1096	Respondent	\$1000
11/10/2013	1097	Dr. Bhuta	\$1,000
11/10/2013	1098	Respondent	\$1000
11/16/2013	1099	Respondent	\$1000
11/21/2013	1100	Respondent	\$1500
11/22/2013	1101	Respondent	\$500
11/28/2013	1102	Respondent	\$500
12/4/2013	1103	Respondent	\$500
12/6/2013	1104	Respondent	\$500
12/8/2013	1105	Respondent	\$500
12/10/2013	1106	Dr. Bhuta	\$1,000
12/19/2013	1107	Respondent	\$1500
12/26/2013	1108	Respondent	\$500

3. During the above period, respondent had received several payments including, among others, a September 25, 2013 check for \$59,400. This check represented the settlement of an attorneys fees claim and the entire amount belonged to respondent (no portion belonged to a client or lienholder).

4. For each check identified in paragraph 2, the source of funds for the check was earned attorneys fees which respondent had retained in his CTA.

5. Respondent did not remove his earned fee from the \$59,400 settlement check (or from other sources) from his CTA. Instead, he kept his earned fees in his CTA and withdrew the funds as needed over the course of several months.

CONCLUSIONS OF LAW:

6. By allowing earned fees to remain in his CTA and writing checks for personal and business expenses from that account, respondent wilfully failed to withdraw his fees at the earliest reasonable time after his interest in the fees became fixed in violation of Rules of Professional Conduct, rule 4-100(A)(2).

Case No. 14-O-03470 (State Bar Investigation)

FACTS:

7. Between January 1, 2014 and June 30, 2014, respondent maintained a Client Trust Account at Bank of the West, account number xxx-xxx084 ("CTA").

8. Respondent wrote the following checks drawn on his CTA, each of which was for a business or personal expense unrelated to a client matter:

<u>Check Date</u>	<u>Check #</u>	<u>Payee</u>	<u>Check Amount</u>
01/02/2014	1109	Respondent	\$750
01/03/2014	1110	Respondent	\$350
01/13/2014	1111	Dr. Bhuta	\$1000
01/14/2014	1112	Respondent	\$375
01/15/2014	1113	Respondent	\$400
01/17/2014	1114	Respondent	\$350
01/21/2014	1115	Respondent	\$150
01/28/2014	1116	Respondent	\$500
01/28/2014	1117	Respondent	\$400
01/31/2014	1118	Respondent	\$600
02/04/2014	1119	Respondent	\$400
02/04/2014	1120	Respondent	\$450
02/05/2014	1121	Respondent	\$300
02/06/2014	1122	Respondent	\$600
02/11/2014	1124	Respondent	\$500
02/11/2014	1125	Respondent	\$850
02/12/2014	1123	Dr. Bhuta	\$1000
02/12/2014	1127	Respondent	\$1000
02/14/2014	1128	Respondent	\$800
02/20/2014	1129	Respondent	\$400
02/20/2014	1130	Respondent	\$400
02/28/2014	1131	Respondent	\$850
03/04/2014	1132	Respondent	\$260
03/04/2014	1133	Respondent	\$300
03/05/2014	1135	Respondent	\$200
03/07/2014	1137	Respondent	\$200

Check Date	Check #	Payee	Check Amount
03/10/2014	1136	Dr. Bhuta	\$1000
03/10/2014	1138	Respondent	\$450
03/10/2014	1139	Respondent	\$800
03/17/2014	1140	Respondent	\$300
03/17/2014	1143	Respondent	\$400
03/21/2014	1144	Respondent	\$400
03/27/2014	1145	Respondent	\$200
06/03/2014	1146	Respondent	\$10
06/03/2014	1147	Respondent	\$23

9. For each check identified in paragraph 8, the source of funds for the check was earned attorneys fees which respondent had retained in his CTA.

10. Respondent did not promptly remove earned fees from his CTA. Instead, he kept his earned fees in his CTA and withdrew the funds as needed over the course of several months.

CONCLUSIONS OF LAW:

11. By allowing earned fees to remain in his CTA and writing checks for personal and business expenses from that account, respondent wilfully failed to withdraw his fees at the earliest reasonable time after his interest in the fees became fixed in violation of Rules of Professional Conduct, rule 4-100(A)(2).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)). Respondent failed to remove fees at the earliest opportunity and instead wrote over ninety (90) checks in incremental amounts while consistently maintaining his own funds in his CTA. Each check removed only an incremental amount and did not remove the full amount of earned fees. Thus, Respondent continually, and throughout the relevant time periods, failed to remove funds at the earliest reasonable time. This constitutes multiple acts of wrongdoing. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168.)

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent has been admitted to practice law since June 1983. Respondent has been discipline free for thirty years of practice from admission to the earliest misconduct herein (2013) and is therefore entitled to mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596.) The Review Department has found twenty-four years of practice without discipline to be entitled to “significant” mitigation. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 167.)

Pretrial Stipulation: Respondent admitted to the misconduct and entered into this stipulation fully resolving this matter prior to trial. Respondent’s cooperation at this stage will save the State Bar resources and time. Respondent’s cooperation in this regard is a mitigating factor in this resolution (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 (where mitigation 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 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 2.2(a) provides that an actual suspension of three months is appropriate for commingling. Respondent here commingled his personal funds in his CTA by failing to remove earned fees at the earliest reasonable opportunity and therefore a three month actual suspension is appropriate under this Standard.

Additionally, Standard 1.7(c) indicates that mitigating circumstances must be considered “alone and in balance with any aggravating circumstances, and if the net effect demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a lesser sanction than what is otherwise specified in a given Standard.”

Concern for public protection exists because of the ongoing nature and multiple acts that make up the misuse of respondent’s CTA. In fact, respondent’s misuse of the CTA makes it far easier that respondent will misappropriate client funds – even unintentionally. Still, respondent has not been disciplined for thirty years of practice and is entitled to “substantial” mitigation. Further, the misconduct is not aggravated by harm to any client or the public at large. Therefore, deviating from the Standard is appropriate in this instance.

Given the above Standards, as well as factors in mitigation and aggravation, discipline consisting of a two (2) year stayed suspension, two (2) year period of probation with conditions, including a sixty-day actual suspension is appropriate. This level of discipline is sufficient to protect the public, the courts, and the legal profession; maintain the highest professional standards; and preserve the public confidence in the legal profession.

Case law supports this recommendation. In *Kelly v. State Bar* (1991) 53 Cal.3d 509, the Supreme Court was confronted with an attorney who deposited client funds into his general account, wrote a check on insufficient funds from his client trust account, and misappropriated \$750 from a client. The Court found that the misappropriation did not stem from deceit or an intent to deceive and that the trust account violations stemmed from a time when the attorney was moving his office and his long time office manager (who handled the bank accounts) had left his employ. There was also an absence of harm with regard to the insufficient check and the commingling. Given the above, as well as mitigation for 13 years of practice without prior discipline, the Court imposed discipline consisting of a three year stayed suspension and a three year probation with conditions, including an actual suspension of one hundred twenty (120) days.

Respondent's misconduct in commingling his fees in his CTA is similar to the conduct in *Kelly*, though the current misconduct occurred over a greater period of time – approximately one year. However, the misconduct in *Kelly* also included misappropriation and the failure to promptly return client funds which is not present here. Further, respondent has additional mitigation in that he has no prior record for thirty years prior to the incident – more than double the thirteen years in *Kelly*. On balance, weighing the aggravation and mitigation, a level of discipline less than that imposed in *Kelly* is appropriate. Given the long period of discipline-free practice and the lack of any harm to respondent's clients, a sixty-day actual suspension is sufficient to protect the public, the courts, and the legal profession; maintain the highest 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-16794	TWO	Business and Professions Code section 6068(i)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of January 29, 2015, the prosecution costs in this matter are estimated at \$8,535. 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 or State Bar Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

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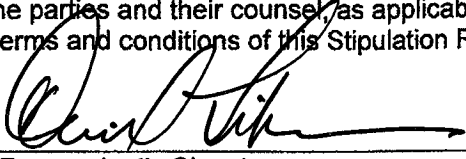
In the Matter of:
DAVID MARK LIBERMAN

Case number(s):
13-O-16794; 14-O-03470

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.

2/5/15
Date


Respondent's Signature

David Liberman
Print Name

2-6-15
Date


Deputy Trial Counsel's Signature

Drew Massey
Print Name

(Do not write above this line.)

In the Matter of:
DAVID MARK LIBERMAN

Case Number(s):
13-O-16794; 14-O-03470

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.)**

2-26-15

Date


GEORGE E. SCOTT, JUDGE PRO TEM
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a 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 February 27, 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 Los Angeles, California, addressed as follows:

**DAVID MARK LIBERMAN
LAW OFC DAVID LIBERMAN
9709 VENICE BLVD APT 4
LOS ANGELES, CA 90034**

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

Drew D. Massey, Enforcement, Los Angeles

Terrie Goldade, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 27, 2015.

Paul Barona

Paul Barona
Case Administrator
State Bar Court