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**State Bar Court of California
Hearing Department
San Francisco
DISBARMENT**

<p>Counsel For The State Bar</p> <p>Robert A. Henderson Supervising Senior Trial Counsel 180 Howard St. San Francisco, CA 94105 (415) 538-2385</p> <p>Bar # 173205</p>	<p>Case Number(s): 14-N-02324-PEM</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 1.2em;">PUBLIC MATTER</p> <p style="text-align: center; font-size: 1.5em;">FILED</p> <p style="text-align: center; font-size: 1.2em;">JUL 02 2014</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Gaspar Roberto Garcia 7 Park Vista Circle Sacramento, CA 95831 (916) 710-1048</p> <p>Bar # 215762</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p>DISBARMENT</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: GASPAR ROBERTO GARCIA</p> <p>Bar # 215762</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.

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A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 3, 2001**.
- (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 resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **(10)** 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."

(Effective January 1, 2014)

Disbarment

- (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):
- Costs to be awarded to the State Bar.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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 **12-O-13163 [S210413]. See Attachment to Stipulation at p. 7.**
 - (b) Date prior discipline effective **August 9, 2013.**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Rules 3-110(A), 3-700(D)(1), and 4-200(A), Business and Professions Code sections 6068(i), 6068(m), and 6106.**
 - (d) Degree of prior discipline **two years stayed suspension, three years of probation on condition of one year actual suspension, along with other conditions of probation.**
 - (e) If respondent has two or more incidents of prior discipline, use space provided below:
13-O-11012 [S216066]. See Attachment to Stipulation at p. 7.
- (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.
- (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.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.

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(13) No mitigating circumstances are involved.

Additional mitigating circumstances:

Pretrial stipulation - See Attachment to Stipulation at p. 7.

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D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **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.

- (2) **Restitution:** Respondent must make restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____. If the Client Security Fund has reimbursed _____ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than _____ days from the effective date of the Supreme Court order in this case.

- (3) **Other:**

CONCLUSIONS OF LAW:

7. By failing to file a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20 subdivision (c) within 40 days of the effective date of the 9.20 order, respondent wilfully violated rule 9.20, California Rules of Court.

AGGRAVATING CIRCUMSTANCES.

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

First Prior

Effective August 9, 2013, in case number 12-O-13163, respondent received a two-year stayed suspension and was placed on a three-year probation with conditions including a one-year actual suspension. This discipline resulted from a stipulation in which respondent admitted to misconduct in a single client matter. Respondent stipulated to: one count of failing to perform legal services competently (rule 3-110(A)), one count of failing to return the client file (rule 3-700(D)(1)), one count of charging and collecting an unconscionable fee (4-200(A)), one count of failing to cooperate in a disciplinary investigation (Bus. & Prof. Code § 6068(i)), two counts of failing to communicate with the client (Bus. & Prof. Code § 6068(m)) and one count of moral turpitude for misappropriating \$204.95 (Bus. & Prof. Code § 6106).

Second Prior

Effective May 11, 2014, in case number 13-O-11012, respondent received a three-year stayed suspension and was placed on a three-year probation with conditions including a two-year actual suspension. This discipline resulted from a stipulation in which respondent admitted to misconduct in a single client matter. Respondent stipulated to: one count of failing to perform legal services competently (rule 3-110(A)), one count of failing to communicate with the client (Bus. & Prof. Code § 6068(m)), and one count of failing to cooperate in a disciplinary investigation (Bus. & Prof. Code § 6068(i)).

MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

Pretrial Stipulation: While the facts of this matter are easily provable, respondent has cooperated with the State Bar by entering into this pretrial stipulation as to facts and conclusions of law, prior to the initial status conference, thereby obviating the need for a hearing and saving State Bar resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “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).)

The Standard for assessing discipline for a violation of rule 9.20 is set out in the rule itself. Rule 9.20(d) states in pertinent part: “A suspended member’s willful failure to comply with the provisions of this rule is a cause for disbarment or suspension. . .”

In this matter, respondent admits to failing to comply with one of the requirements of Supreme Court Order no. S210413, to file a rule 9.20 Compliance Declaration. Standard 1.8(b) states:

“(b) If a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:

1. Actual suspension was ordered in any one of the prior disciplinary matters;”

Respondent has two prior records of discipline, both of which involve actual suspension from the practice of law, with the only mitigating factor being this pre filing stipulation. As the single mitigating factor is not compelling and the time frames are different, disbarment would be the appropriate level of discipline under Standard 1.8(b).

For further guidance on the appropriate level of discipline we look to case law, which has stated: “Disbarment is generally the appropriate sanction for a wilful violation of rule 955 [current rule 9.20].” (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; see also *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186-1188; *Powers v. State Bar* (1988) 44 Cal.3d 337, 341-342; *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593, 599-601; *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439, 442-444.)

As discussed above, the aggravating factor of two prior records of discipline outweigh strongly the very modest mitigation of a pre-filing stipulation. Disbarment is the appropriate discipline, which will protect the public and the administration of justice in the future.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of June 9, 2014, the prosecution costs in this matter are \$2,432. 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.

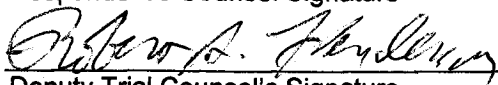
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In the Matter of: GASPAR ROBERTO GARCIA	Case number(s): 14-N-02324-PEM
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SIGNATURE OF THE PARTIES

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.

1-26-14  Gaspar R. Garcia
Date Respondent's Signature Print Name

1/27/14  Robert A. Henderson
Date Deputy Trial Counsel's Signature Print Name

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In the Matter of: GASPAR ROBERTO GARCIA	Case Number(s): 14-N-02324-PEM
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DISBARMENT 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:

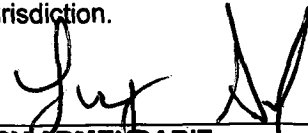
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

This stipulation is MODIFIED to reflect that respondent's legal name is "Gaspar Roberto Garcia II"

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.)**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Date July 2, 2014


 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 July 2, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

GASPAR R. GARCIA II
GARCIA AND ASSOCIATES
7 PARK VISTA CIR
SACRAMENTO, CA 95831

- 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:

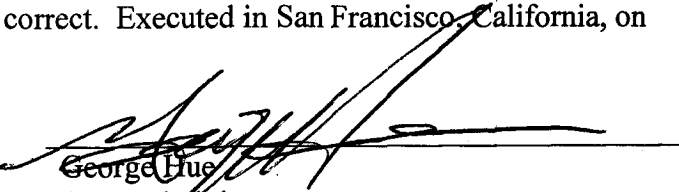
- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- 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:

Robert A. Henderson, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 2, 2014.


George Hue
Case Administrator
State Bar Court