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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Heather E. Abelson Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2357 Bar # 243691	Case Number(s): 14-O-00780-LMA 14-O-01401 (Inv.) 14-O-01928 (Inv.)	For Court use only PUBLIC MATTER FILED <i>rs</i> SEP - 4 2014 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Justin Thomas Allen 14188 W. Sunset Dr. Livingston, CA 95334 (209) 276-6639 Bar # 238195	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: JUSTIN THOMAS ALLEN Bar # 238195 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.

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A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 1, 2005**.
- (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 **18** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **See Attachment to Stipulation at p. 15.**
- (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. **See Attachment to Stipulation at p. 15.**
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Attachment to Stipulation at p. 15.**
- (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 to Stipulation at p. 15.
Pretrial Stipulation - See Attachment to Stipulation at p. 15.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **two 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 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 **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: JUSTIN THOMAS ALLEN	Case Number(s): 14-O-00780-LMA; 14-O-01401; 14-O-01928
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Financial Conditions

a. Restitution

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

Payee	Principal Amount	Interest Accrues From
Jamie Rossberg	\$1,710	February 5, 2014
Glenn Farmer	\$7,700	May 2, 2013
Steven and Kathy Evans	\$2,500	March 18, 2013

- 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 reproval), 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
Jamie Rossberg	\$100	by the 15 th of each month following the effective date of the Supreme Court Order
Glenn Farmer	\$300	by the 15 th of each month following the effective date of the Supreme Court Order
Steven and Kathy Evans	\$100	by the 15 th of each month following the effective date of the Supreme Court Order

- 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:

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- 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.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JUSTIN THOMAS ALLEN

CASE NUMBERS: 14-O-00780-LMA; 14-O-01401; 14-O-01928

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 14-O-00780-LMA (Complainant: Jamie Rossberg)

FACTS:

1. Around April 2012, Jamie Rossberg ("Rossberg") employed respondent to file a breach of contract lawsuit on her behalf.
2. On October 2, 2012, respondent filed a civil complaint in the wrong venue on behalf of Rossberg entitled *Rossberg v. Marquette Apiaries*, Stanislaus Superior Court, case no. 679267 (hereinafter, the "breach of contract matter").
3. On December 12, 2012, respondent signed a stipulation agreeing to transfer the breach of contract matter to the proper venue, Kern County Superior Court, and agreeing that Rossberg would assume the transfer costs.
4. Respondent failed to notify Rossberg of the stipulation to change venue, and failed to obtain her permission to enter into the stipulation.
5. Thereafter, the breach of contract matter proceeded in Kern County Superior Court under case no. S-1500-CV-278572.
6. On March 7, 2013, counsel for defendants in the breach of contract matter filed a cross-complaint against Rossberg.
7. Respondent failed to inform Rossberg about the cross-complaint.
8. On May 21, 2013, respondent appeared on behalf of Rossberg at a Case Management Conference in the breach of contract matter, and waived Rossberg's right to a jury trial.
9. Respondent failed to notify Rossberg of his intention to waive her right to a jury trial, and failed to obtain her permission to do so.
10. On June 6, 2013, counsel for the defendants in the breach of contract matter served respondent with Requests for Production of Documents, Demand for Identification, Inspection and Production of Documents, Form Interrogatories, and Special Interrogatories.

11. Respondent failed to respond to the defendants' June 6, 2013 Requests for Production of Documents, Demand for Identification, Inspection and Production of Documents, Form Interrogatories, and Special Interrogatories.

12. On October 6, 2013, respondent sent an email to Rossberg stating that respondent was experiencing severe health problems, and that Rossberg "MAY want to hire a healthy attorney."

13. Around October 12, 2013, Rossberg and her mother went to respondent's office to pick up her client file. Rossberg's mother went into respondent's office to get the file while Rossberg waited in her car. Respondent, who was present at his office, gave Rossberg's mother a completed Substitution of Attorney form, without explaining what it was, and told her to have Rossberg sign the document in exchange for her client file. The Substitution of Attorney form that respondent gave to Rossberg's mother contained an incorrect address for Rossberg. Rossberg's mother gave the form to Rossberg to sign. Rossberg signed the Substitution of Attorney form without respondent explaining to Rossberg the purpose or effect of the form.

14. On October 21, 2013, respondent filed the Substitution of Attorney form in the breach of contract matter.

15. Rossberg did not receive correspondence, motions or orders from the court or opposing counsel in the breach of contract matter as a result of the filed Substitution of Attorney form which contained an incorrect address for Rossberg.

16. On December 19, 2013, defendants filed a Motion to Have Matters Deemed Admitted and Request for Monetary Sanctions based on respondent's failure to respond to defendants' June 6, 2013 discovery requests. Rossberg did not receive a copy of the Motion.

17. On December 19, 2013, Rossberg filed a complaint against respondent with the State Bar (hereinafter, the "Rossberg complaint").

18. On February 5, 2014, an order granting defendants' Motion to Have Matters Deemed Admitted and Request for Monetary Sanctions was filed, as no opposition had been filed by Rossberg, and Rossberg was ordered to pay \$1,710 in sanctions. To date, the sanctions against Rossberg have not been paid.

19. On March 12 and March 26, 2014, a State Bar Investigator sent two letters to respondent regarding the Rossberg complaint. The State Bar Investigator's letters requested that respondent respond in writing to the specified allegations of misconduct being investigated by the State Bar in the Rossberg complaint. Soon after the State Bar Investigator's letters were sent, respondent received the letters, but failed to provide a written response to the allegations of misconduct in the Rossberg complaint.

CONCLUSIONS OF LAW:

20. By filing the breach of contract matter in the wrong venue, failing to obtain Rossberg's permission to waive her right to a jury trial, and failing to serve responses to the Requests for Production of Documents, Demand for Identification, Inspection and Production of Documents, Form Interrogatories, and Special Interrogatories, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

21. By having Rossberg sign a Substitution of Attorney form, without first explaining to her the purpose or effect of the form, and by filing a Substitution of Attorney form which contained an incorrect address for Rossberg, respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to Rossberg, and failed to inform Rossberg that he was withdrawing from employment, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

22. By failing to inform Rossberg that respondent had erroneously filed the breach of contract matter in the wrong venue, failing to inform Rossberg of the stipulation to change venue and assume transfer costs, failing to inform Rossberg that a cross-complaint had been filed against her, failing to inform Rossberg that respondent had failed to serve responses to Requests for Production of Documents, Demand for Identification, Inspection and Production of Documents, Form Interrogatories, and Special Interrogatories, and failing to notify Rossberg of the purpose and effect of the Substitution of Attorney form, respondent failed to keep his 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).

23. By failing to provide a substantive response to the State Bar's letters of March 12 and March 26, 2014, which respondent received, that requested respondent's response to the allegations of misconduct being investigated in case no. 14-O-00780, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of Business and Professions Code, section 6068(i).

Case No. 14-O-001401 (Complainant: Glenn Farmer)

FACTS:

24. On May 2, 2013, Glenn Farmer ("Farmer") hired respondent to represent him at a two day hearing in the ongoing family law matter entitled *Farmer v. Farmer*, Stanislaus County Superior Court, case no. 454525 (hereinafter, the "family law matter").

25. Respondent appeared before the court in the family law matter on May 8, 2013, and continued the hearing date. On November 12, 2013, Respondent filed a Declaration to Request Custody in the family law matter. Neither of these actions taken by respondent in the family law matter benefited Farmer. Respondent performed no legal services of value on behalf of Farmer.

26. Between May 2, 2013 and July 12, 2013, respondent received a total of \$7,700 in advanced fees from Farmer.

27. On January 29, 2014, less than two weeks before the scheduled hearing date, respondent erroneously texted Farmer a message that was addressed to another of respondent's clients, in which respondent stated that he was experiencing severe health problems, and suggested that the other client obtain new counsel.

28. After receiving this text message, between January 29, 2014 and February 3, 2014, Farmer spoke with respondent over the phone and demanded a refund and a return of his client file.

29. On February 3, 2014, Farmer filed a police report against respondent with the Turlock Police Department for purported theft of his client file.

30. On February 6, 2014, Farmer filed a complaint against respondent with the State Bar (hereinafter, the "Farmer complaint").

31. On February 13, 2014, Farmer sent a text to respondent requesting his client file.

32. On February 13, 2014, respondent sent a text to Farmer stating "per state bar rules I will provide a digital copy to Turlock PD for free. Paper copies, if I have any, are .50 cents per page."

33. In March 2014, Farmer's new counsel attempted to obtain respondent's signature on a Substitution of Attorney form. Farmer's new counsel was unable to contact respondent.

34. On March 20, 2014, Farmer's new counsel filed a Substitution of Attorney form which did not include respondent's signature because Farmer's new counsel was unable to contact respondent.

35. On March 22, 2014, respondent delivered an incomplete client file to Farmer's new counsel's office.

36. To date, respondent has not refunded any of the \$7,700 in advanced fees paid by Farmer.

37. To date, respondent has not returned a complete client file to Farmer or to his new counsel.

38. As a result of respondent's failure to provide any services of value, and failure to timely return a complete client file, Farmer's new counsel had to request that the hearing in the family law matter be continued on February 7, 2014, and again on April 28, 2014.

39. On April 4, 2014, a State Bar Investigator mailed a letter to respondent's official membership records address regarding the Farmer complaint. The State Bar Investigator's letter requested that respondent respond in writing to the specified allegations of misconduct being investigated by the State Bar in the Farmer complaint. On May 19, 2014, the letter was returned to the State Bar as undeliverable. On May 21, 2014, a State Bar investigator emailed a copy of the April 4, 2014 letter to respondent's official membership records email address. The State Bar investigator's email did not bounce back, and respondent failed to provide a written response to the allegations of misconduct in the Farmer complaint.

CONCLUSIONS OF LAW:

40. By failing to take any action in the family law matter between May 2013 and February 2014 that benefited Farmer, and failing to provide any legal services of value to Farmer, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

41. By failing to refund any part of the \$7,700 in advanced fees paid by Farmer, respondent failed to promptly refund unearned fees, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

42. By failing to promptly release all of Farmer's papers and property to Farmer or his new counsel, respondent failed to release a client file, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

43. By failing to execute a Substitution of Attorney form, and failing to take reasonable steps to avoid reasonably foreseeable prejudice to Farmer, respondent withdrew from employment in a

proceeding before a tribunal without its permission, in willful violation of the Rules of Professional Conduct, rule 3-700(A)(1).

Case No. 14-O-01928 (Complainants: Steven and Kathy Evans)

FACTS:

44. In March 2013, Steven and Kathy Evans (“the Evanses”) hired respondent to file a Chapter 7 bankruptcy petition in the United States District Court Eastern District of California (hereinafter, the “bankruptcy matter”).

45. Between March 18, 2013 and August 27, 2013, respondent received a total of \$2,500 in advanced fees from the Evanses.

46. Between March 18, 2013 and April 25, 2014, respondent failed to take any action whatsoever in the bankruptcy matter that benefited the Evanses, and failed to file a petition for bankruptcy on behalf of the Evanses. Respondent performed no services of value on behalf of the Evanses in the bankruptcy matter.

47. On March 18, 2014, the Evanses filed a complaint against respondent with the State Bar (hereinafter, the “Evanses complaint”).

48. As of April 24, 2014, at the latest, respondent constructively withdrew from employment.

49. On April 25, 2014, Steven Evans sent an email to respondent in which he terminated respondent’s employment, requested a refund, and requested his client file.

50. At no point prior to April 25, 2014, did respondent notify the Evanses that he was withdrawing from employment.

51. To date, respondent has not refunded any of the \$2,500 in advanced fees paid by the Evanses.

52. To date, respondent has not returned the Evanses’ client file.

53. On April 23 and May 16, 2014, a State Bar Investigator mailed two letters to respondent’s official membership records address regarding the Evanses complaint. The State Bar Investigator’s letters requested that respondent respond in writing to the specified allegations of misconduct being investigated by the State Bar in the Evanses complaint. On May 13 and May 22, 2014, respectively, the two letters were returned to the State Bar as undeliverable. On May 21, 2014, a State Bar investigator emailed a copy of the April 23, 2014 letter to respondent’s official membership records email address. The State Bar investigator’s email did not bounce back, and respondent failed to provide a written response to the allegations of misconduct in the Evanses complaint.

CONCLUSIONS OF LAW:

54. By failing to take any action in the bankruptcy matter that benefited the Evanses, and by failing to file a petition for bankruptcy on behalf of the Evanses, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

55. By failing to notify the Evanses that respondent was withdrawing from employment, respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to the Evanses, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

56. By failing to refund any part of the \$2,500 in advanced fees paid by the Evanses, respondent failed to promptly refund unearned fees, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

57. By failing to release all of the Evanses' papers and property to the Evanses, respondent failed to release a client file, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.5(f)): Respondent's misconduct caused Farmer's family law hearing to be substantially delayed. Respondent's misconduct also caused Rossberg to be sanctioned \$1,710 for failing to respond to discovery. Respondent's misconduct also caused substantial financial harm to the Evanses, as their bankruptcy was never filed. The substantial harm suffered by all three of respondent's clients constitutes an aggravating factor pursuant to Standard 1.5(f).

Lack of Cooperation (Std. 1.5(h)): Respondent demonstrated a lack of cooperation in case nos. 14-O-01401 and 14-O-01928 by failing to respond to two letters emailed to respondent by a State Bar investigator on May 21, 2014. Respondent's lack of cooperation constitutes an aggravating circumstance pursuant to Standard 1.5(h).

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent committed 12 acts of misconduct in three client matters. Respondent's multiple acts of misconduct constitute an aggravating circumstance pursuant to Standard 1.5(b).

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Discipline: Although respondent's misconduct is serious, he is entitled to mitigation for having practiced law for approximately 9 years without discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby saving 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].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, respondent committed 12 acts of professional misconduct. Standard 1.7(a) requires that where a respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.” (Std. 1.7(a).) The most severe sanction applicable to respondent’s misconduct is found in Standard 2.5 which provides that “[a]ctual suspension is appropriate for failing to perform legal services or properly communicate in multiple client matters, not demonstrating a pattern of misconduct.” Respondent’s misconduct warrants a 60-day actual suspension, as opposed to a 30-day actual suspension, because respondent’s 12 acts of misconduct are aggravated by multiple acts of misconduct, lack of cooperation, and substantial harm to three clients. A higher level of discipline is not warranted as respondent’s misconduct is mitigated by respondent having practiced law for approximately 9 years without discipline and for entering into a pre-trial stipulation.

Supreme Court precedent also supports a 60-day actual suspension. In *Bach v. State Bar* (1991) 52 Cal.3d 1201, the California Supreme Court ordered respondent Bach actually suspended from the practice of law for thirty days, for failing to perform legal services competently for a single client, failing to communicate with his client, withdrawing from representation without client consent or court approval, failing to refund unearned fees, and failing to cooperate in the State Bar’s investigation. (*Id.* at 1205.) The Court noted that respondent had 26 years of prior practice with no discipline. (*Id.* at 1204, 1208.) The Court also found that respondent’s refusal to accept any responsibility for the harm caused to his client, was an aggravating factor. (*Id.* at 1209.)

Here, Respondent’s misconduct is more egregious than attorney Bach’s misconduct. Respondent committed 12 acts of misconduct in three client matters, as opposed to attorney Bach who committed 5 acts of misconduct in a single client matter. Respondent’s misconduct is also subject to more aggravating circumstances.

Balancing all of the appropriate factors, a 60-day actual suspension is consistent with the Standards and *Bach*, and is appropriate taking into consideration the facts circumstances of this case.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of August 25, 2014, the prosecution costs in this matter are \$5,407. Respondent further acknowledges that

should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: JUSTIN THOMAS ALLEN	Case number(s): 14-O-00780-LMA; 14-O-01401; 14-O-01928
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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.

0/25/14 _____ Justin Thomas Allen
Date Respondent's Signature Print Name

_____ Respondent's Counsel Signature Print Name

6/25/14 _____ Heather E. Abelson
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: JUSTIN THOMAS ALLEN	Case Number(s): 14-O-00780-LMA; 14-O-01401; 14-O-01928
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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

Sept 4, 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 September 4, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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


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

JUSTIN T. ALLEN
JUSTIN THOMAS ALLEN, ESQ
14188 W SUNSET DR
LIVINGSTON, CA 95334

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

HEATHER ABELSON, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 4, 2014.



Mazie Yip
Case Administrator
State Bar Court