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State Bar Court of California Hearing Department Los Angeles DISBARMENT			PUBLIC MATTER	
Counsel For The State Bar Charles T. Calix Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, 90017-2515 (213) 765-1255 Bar # 146853	Case Number(s): 14-O-02494 [INV], 14-O-03710 [INV], 14-O-03749 [INV], 14-O-03751 [INV], 14-O-04067 [INV], 14-O-04163 [INV], and 14-O-05564 [INV]	For Court use only <div style="text-align: center;"> FILED FEB 10 2015 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>		
Counsel For Respondent Anthony Radogna Law Offices of Anthony Radogna 1 Park Plaza, Suite 600 Irvine, CA 92614 (909) 622-5049 Bar # 261859	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED			
In the Matter of: CLAYTON MARLOW ANDERSON, JR. Bar # 69988 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 **December 22, 1976.**
- (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 **(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):
- 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
 - (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 at page 15.**
- (8) **Restitution:** Respondent failed to make restitution. **See Attachment at page 15.**
- (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:

No Prior Discipline: See attachment at page 16.

Prefiling Stipulation: See attachment at page 16.

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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 **Jefferson Pointe Professional Center Property Owners Association** in the amount of \$ 748,265.62 plus 10 percent interest per year from **September 9, 2014**. If the Client Security Fund has reimbursed **Jefferson Pointe Professional Center Property Owners Association** 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 *n/a* days from the effective date of the Supreme Court order in this case.
- (3) **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: CLAYTON MARLOW ANDERSON, JR.

CASE NUMBERS: 14-O-02494, 14-O-03710, 14-O-03749, 14-O-03751, 14-O-04067,
14-O-04163, and 14-O-05564

FACTS AND CONCLUSIONS OF LAW.

Clayton Marlow Anderson, Jr. ("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-02494 (Complainant: Peter E. Racobs, Esq.)

FACTS:

1. On September 17, 2010, the Jefferson Pointe Professional Center Property Owners Association ("Jefferson Pointe POA") employed respondent to file a construction defect case on its behalf. Four authorized agents of the Jefferson Pointe POA signed the contingency fee agreement prepared by respondent on behalf of the association.

2. Respondent did not obtain the informed written consent of the individual property owners to represent the interests of the Jefferson Pointe POA and each of the individual property owners, which were potentially conflicting because the damages each property owner suffered and the share each would receive of any settlement had not been determined at the time that respondent was employed.

3. On December 30, 2010, respondent filed a complaint on behalf of the Jefferson Pointe POA and the individual property owners in the Superior Court of California, County of Riverside.

4. In Fall 2012, respondent settled the case he filed on behalf of the Jefferson Pointe POA and the individual property owners with certain defendants for \$1,822,000.

5. On October 24, 2012, respondent sent a letter to three of the four authorized agents who signed the contingency fee agreement offering to invest Jefferson Pointe POA's share of the settlement proceeds into A-Plan Investment Services, Inc. ("A-Plan"), which was an investment vehicle that respondent operated to invest funds in his construction defect cases. Thereafter, respondent and the authorized agents discussed the association's possible investment in A-Plan.

6. Respondent received settlement checks totaling \$1,822,000 from the settling defendants, which he deposited into his client trust account ("CTA").

7. In February 2013, respondent sent a distribution worksheet to Jefferson Pointe POA stating that: (A) attorney's fees and costs were \$661,383.34; and (B) expert fees were \$178,066.91, which left a balance of \$982,549.69.

8. On February 12, 2013, respondent sent a CTA check for \$182,549.69 to Jefferson Pointe POA, which left a balance of \$800,000 in his CTA for the Jefferson Pointe POA.

9. In February 2013, respondent invested \$800,000 belonging to Jefferson Pointe POA in A-Plan. The terms of the investment were not set forth in writing, the terms of the investment were not fully disclosed to the authorized agents for Jefferson Pointe POA, the authorized agents for Jefferson Pointe POA did not consent to the investment in writing, and the authorized agents for Jefferson Pointe POA were not advised that they could seek the advice of an independent lawyer of their choice. The investment was not fair and reasonable because: (A) the investment was unsecured; (B) A-Plan was not licensed to operate as an investment company by the Securities and Exchange Commission or Financial Industry Regulatory Authority, Inc., and (C) A-Plan's corporate status had been suspended by the California Secretary of State.

10. Between February 28, 2013 and September 9, 2014, A-Plan made interest payments totaling \$153,925.38 and a principle payment of \$25,000 to Jefferson Pointe POA.

11. On November 5 and 19, 2013, an authorized agent for Jefferson Pointe POA sent emails to respondent requesting a payment schedule for the remaining proceeds and suggesting that respondent pay \$200,000 per month on the 6th day of January, February, March, and April 2014. Respondent received the emails, and made a \$25,000 payment on December 27, 2013 in response to the emails.

12. On March 6, 2014, attorney Peter E. Racobs sent a letter to respondent on behalf of Jefferson Pointe POA requesting payment of \$775,000. Respondent received the letter.

13. On March 25, 2014, respondent sent a letter to Racobs where he agreed to pay \$775,000 to Jefferson Pointe POA by paying \$25,000 per month in April, May and June 2014, \$100,000 per month in July, August, September, 2014, and November 2014, and \$200,000 in December 2014.

14. Respondent has not made any payments to Jefferson Pointe POA since September 9, 2014.

15. Altogether, A-Plan paid \$178,925.38 to Jefferson Pointe POA, which leaves a principle balance of \$748,265.62.

CONCLUSIONS OF LAW:

16. By accepting representation of the Jefferson Pointe POA without informing each of the property owners of the actual and reasonably foreseeable adverse consequences of representing all of the plaintiffs in the same litigation, respondent failed to obtain the informed written consent of the client in willful violation of Rules of Professional Conduct, rule 3-310(C)(1).

17. By entered into a business transaction with a client, Jefferson Pointe POA, specifically, investing \$800,000 belonging to the client in A-Plan when: (A) the terms of the investment were not set forth in writing; (B) the terms of the investment were not fully disclosed to the authorized agents; (C) the authorized agents did not consent to the investment in writing; (D) the authorized agents were not advised that they could seek the advice of an independent lawyer of their choice; (E) the investment was not fair and reasonable because it was unsecured; (F) the investment was not fair and reasonable because A-Plan was not licensed to operate as an investment company by the Securities or Exchange Commission or Financial Industry Regulatory Authority, Inc.; and (G) the investment was not fair and reasonable because A-Plan's corporate status had been suspended by the California Secretary of State, Respondent willfully violated Rules of Professional Conduct, rule 3-300.

reasonable because A-Plan's corporate status had been suspended by the California Secretary of State, Respondent willfully violated Rules of Professional Conduct, rule 3-300.

Case No. 14-O-03710 (Complainant: Winnie Macgregor)

FACTS:

17. In November 2009, Winnie MacGregor ("MacGregor") and 23 other homeowners (collectively the "MacAfee plaintiffs") employed respondent to file a construction defect case on their behalf.

18. Respondent did not obtain MacGregor's informed written consent to represent the interests of all of the MacAfee plaintiffs, which were potentially conflicting because the damages each suffered and the share each would receive of any settlement had not been determined at the time that they employed respondent.

19. On February 26, 2010, respondent filed a complaint on behalf of the MacAfee plaintiffs in the Superior Court of California, County of Riverside.

20. In August 2012, respondent settled the case he filed on behalf of the MacAfee plaintiffs with certain defendants for \$227,600.

21. On August 1, 2012, respondent sent a letter to MacGregor that stated that certain defendants had agreed to settle, and enclosed a "Settlement and Release Agreement" and settlement disbursement worksheet. The worksheet stated that: (A) MacGregor's share of the settlement was \$6,741.36; (B) her pro rata share of attorney's fees and costs was \$2,442.20; and (C) her pro rata share of expert fees was \$894.99, which left a balance of \$3,405.17 as her portion of the settlement.

22. Between August 10, 2012 and October 15, 2013, respondent received settlement checks from the settling defendants, which he deposited into his client trust account ("CTA"). After subtracting his contingency fee, costs, expert fees and payments to the other MacAfee plaintiffs, respondent was required to maintain in his CTA the sum of \$3,405.17 on behalf of MacGregor.

23. Respondent did not prepare and maintain a written ledger for of the MacAfee plaintiffs, a written journal for each client trust account, or the monthly reconciliations required by rule 4-100(B)(3), Rules of Professional Conduct.

24. Respondent did not disburse any settlement proceeds to MacGregor, before the balance in his CTA dipped to the sum of -\$5,227.15 on October 21, 2013. Respondent intentionally misappropriated the settlement funds received on behalf of MacGregor.

25. On May 5, 2014, MacGregor submitted her complaint to the State Bar.

26. On September 9, 2014, respondent paid \$3,405.17 to MacGregor after being notified of her complaint.

CONCLUSIONS OF LAW:

27. By accepting representation of MacGregor without informing her of the actual and reasonably foreseeable adverse consequences of representing her and the other MacAfee plaintiffs in the same litigation, respondent failed to obtain the informed written consent of the client in willful violation of Rules of Professional Conduct, rule 3-310(C)(1).

28. By failing to maintain the sum of \$3,405.17 in his CTA on behalf of MacGregor, respondent failed to maintain a balance of the sum of \$3,405.17 received on behalf of MacGregor in his CTA in willful violation of Rules of Professional Conduct, rule 4-100(A).

29. By misappropriating the sum of \$3,405.17 from MacGregor, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

30. By failing to prepare and maintain a written ledger for the MacAfee plaintiffs, a written journal for his CTA, or the monthly reconciliations for the written ledger, written journal, and bank statements, respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

Case No. 14-O-03749 (Complainant: James Gosney)

FACTS:

31. In November 2010, James Gosney ("Gosney") and 18 homeowners (collectively the "Loera plaintiffs") employed respondent to file a construction defect case on their behalf.

32. Respondent did not obtain Gosney's informed written consent to represent the interests of all of the Loera plaintiffs, which were potentially conflicting because the damages each suffered and the share each would receive of any settlement had not been determined at the time that they employed respondent.

33. On May 23, 2012, respondent filed a complaint on behalf of the Loera plaintiffs in the Superior Court of California, County of Riverside.

34. In November 2012, respondent settled the complaint he filed on behalf of the Loera plaintiffs with certain defendants for \$63,300.

35. On November 26, 2012, respondent sent a letter to Gosney that stated that the case had settled and enclosed a "Global Settlement Breakdown." The Breakdown stated that: (A) Gosney's share of the settlement was \$5,034.74; (B) his pro rata share of attorney's fees and costs was \$1,544.45; and (C) his pro rata share of expert fees was \$645.21, which left a balance of \$2,845.08 as his portion of the settlement.

36. Between November 2012 and September 2013, respondent received settlement checks from the settling defendants, which he deposited into his client trust account ("CTA"). After subtracting his contingency fee, costs, expert fees and payments to the other Loera plaintiffs, respondent was required to maintain in his CTA the sum of \$2,845.08 on behalf of Gosney.

37. Respondent did not prepare and maintain a written ledger for of the Loera plaintiffs, a written journal for each client trust account, or the monthly reconciliations required by rule 4-100(B)(3), Rules of Professional Conduct.

38. Respondent did not disburse any settlement proceeds to Gosney, before the balance in his CTA dipped to the sum of -\$5,227.15 on October 21, 2013. Respondent intentionally misappropriated the settlement funds received on behalf of Gosney.

39. On April 23, 2014, Gosney submitted his complaint to the State Bar.

40. On September 8, 2014, respondent paid \$2,845.08 to Gosney after being notified of his complaint.

CONCLUSIONS OF LAW:

41. By accepting representation of Gosney without informing him of the actual and reasonably foreseeable adverse consequences of representing him and the Loera plaintiffs in the same litigation, respondent failed to obtain the informed written consent of the client in willful violation of Rules of Professional Conduct, rule 3-310(C)(1).

42. By failing to maintain the sum of \$2,845.08 in his CTA on behalf of Gosney, respondent failed to maintain a balance of the sum of \$2,845.08 received on behalf of Gosney in his CTA in willful violation of Rules of Professional Conduct, rule 4-100(A).

43. By misappropriating the sum of \$2,845.08 from Gosney, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

44. By failing to prepare and maintain a written ledger for the Loera plaintiffs, a written journal for his CTA, or the monthly reconciliations for the written ledger, written journal, and bank statements, respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

Case No. 14-O-03751 (Complainant: Perfecto and Maria Ramirez)

FACTS:

45. In February 2010, Perfecto and Maria Ramirez (the "Ramirezes") and approximately 53 other homeowners (collectively the "Andrews plaintiff(s)") employed respondent to file a construction defect case on their behalf.

46. Respondent did not obtain the Ramirezes' informed written consent to represent the interests of all of the Andrews plaintiffs, which were potentially conflicting because the damages each suffered and the share each would receive of any settlement had not been determined at the time that they employed respondent.

47. On April 5, 2010, respondent filed a complaint on behalf of the Andrews plaintiffs in the Superior Court of California, County of Kern.

48. In November 2013, respondent settled the complaint he filed on behalf of the Andrews plaintiffs with certain defendants for \$492,000.

49. Respondent sent a "Global Settlement Breakdown" to the Ramirezes that stated that: (A) their share of the settlement was \$10,425.65; (B) their pro rata share of attorney's fees and costs was \$2,414.10; and (C) their pro rata share of expert fees was \$1,784.93, which left a balance of \$6,226.62.

50. Between August 2012 and November 2013, respondent received settlement checks from the defendants, which he deposited into his client trust account ("CTA"). After subtracting his contingency fee, costs, expert fees and payments to the other Andrews plaintiffs, respondent was required to maintain in his CTA the sum of \$6,226.62 on behalf of Ramirez as their portion of the settlement.

51. Respondent did not prepare and maintain a written ledger for of the Andrews plaintiffs, a written journal for each client trust account, or the monthly reconciliations required by rule 4-100(B)(3), Rules of Professional Conduct.

52. Respondent did not disburse any settlement proceeds to the Ramirezes, before the balance in his CTA dipped to the sum of -\$8,070.98 on January 8, 2014. Respondent intentionally misappropriated the settlement funds received on behalf of the Ramirezes.

53. On June 12, 2014, the Ramirezes submitted their complaint to the State Bar.

54. On July 24, 2014, respondent paid \$4,926.62 to the Ramirezes, and on September 9, 2014, respondent paid \$1,397.50 to the Ramirezes, which were made after being notified of their complaint.

CONCLUSIONS OF LAW:

55. By accepting representation of the Ramirezes without informing them of the actual and reasonably foreseeable adverse consequences of representing them and the Andrews plaintiffs in the same litigation, respondent failed to obtain the informed written consent of the clients in willful violation of Rules of Professional Conduct, rule 3-310(C)(1).

56. By failing to maintain the sum of \$6,226.62 in his CTA on behalf of Ramirez, respondent failed to maintain a balance of the sum of \$6,226.62 received on behalf of Ramirez in his CTA in willful violation of Rules of Professional Conduct, rule 4-100(A).

57. By misappropriating the sum of \$6,226.62 from Ramirez, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

58. By failing to prepare and maintain a written ledger for the Andrews plaintiffs, a written journal for his CTA, or the monthly reconciliations for the written ledger, written journal, and bank statements, respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

Case No. 14-O-04067 (Complainant: Kevin And Maria Heiner)

FACTS:

59. In July 2011, Kevin and Maria Heiner (the "Heiners") and 16 other homeowners (collectively the "Kukwa plaintiffs") employed respondent to file a construction defect case on their behalf.

60. Respondent did not obtain the Heiners' informed written consent to represent the interests of all of the Kukwa plaintiffs, which were potentially conflicting because the damages each suffered and the share each would receive of any settlement had not been determined at the time that they employed respondent.

61. In November 2013, respondent settled the case he filed on behalf of the Kukwa plaintiffs with a single defendant for \$62,000.

62. On November 6, 2013, respondent sent a letter to the Heiners that stated that the defendant had agreed to settle and enclosed a "Settlement Breakdown." The Breakdown stated that: (A) the Heiners' share of the settlement was \$13,198.35; (B) their pro rata share of attorney's fees and costs was \$5,603.15; and (C) their pro rata share of expert fees was \$2,628.50, which left a balance of \$4,966.70 as their portion of the settlement.

63. On February 28, 2014, respondent received the settlement check from the defendant, which he deposited into his client trust account ("CTA"). After subtracting his contingency fee, costs, expert fees and payments to the other Kukwa plaintiffs, respondent was required to maintain in his CTA the sum of \$4,966.70 received on behalf of the Heiners.

64. Respondent did not prepare and maintain a written ledger for of the Kukwa plaintiffs, a written journal for each client trust account, or the monthly reconciliations required by rule 4-100(B)(3), Rules of Professional Conduct.

65. Respondent did not disburse any settlement proceeds to the Heiners, before the balance in his CTA dipped to the sum of -\$7,068.59 on April 8, 2014. Respondent intentionally misappropriated the settlement funds received on behalf of the Heiners.

66. On July 9, 2014, the Heiners submitted their complaint to the State Bar.

67. On September 9, 2014, respondent paid \$5,339.20 to the Heiners after being notified of their complaint.

CONCLUSIONS OF LAW:

68. By accepting representation of the Heiners without informing them of the actual and reasonably foreseeable adverse consequences of representing them and the other Kukwa plaintiffs in the same litigation, respondent failed to obtain the informed written consent of the clients in willful violation of Rules of Professional Conduct, rule 3-310(C)(1).

69. By failing to maintain the sum of \$4,966.70 in his CTA on behalf of the Heiners, respondent failed to maintain a balance of the sum of \$4,966.70 received on behalf of the Heiners in his CTA in willful violation of Rules of Professional Conduct, rule 4-100(A).

70. By misappropriating the sum of \$4,966.70 from the Heiners, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

71. By failing to prepare and maintain a written ledger for the Kukwa plaintiffs, a written journal for his CTA, or the monthly reconciliations for the written ledger, written journal, and bank statements, respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

Case No. 14-O-04163 (Complainant: Sara Lam)

FACTS:

72. In March 2010, Sara Lam ("Lam") and 18 other homeowners (collectively the "Brock plaintiffs") employed respondent to file a construction defect case on their behalf.

73. Respondent did not obtain Lam's informed written consent to represent the interests of all of the Brock plaintiffs, which were potentially conflicting because the damages each suffered and the share each would receive of any settlement had not been determined at the time that they employed respondent.

74. On June 1, 2010, respondent filed a complaint on behalf of the Brock plaintiffs in the Superior Court of California, County of Kern.

75. Between September 2012 and June 13, 2013, respondent settled the case he filed on behalf of the Brock plaintiffs with certain defendants for \$186,000.

76. Between September 26, 2012 and July 25, 2013, respondent received settlement checks from the settling defendants, which he deposited into his client trust account ("CTA"). After subtracting his contingency fee, costs, expert fees and payments to the other Brock plaintiffs, respondent was required to maintain in his CTA the sum of \$10,750 on behalf of Lam as her portion of the settlement.

77. Respondent did not prepare and maintain a written ledger for of the Brock plaintiffs, a written journal for each client trust account, or the monthly reconciliations required by rule 4-100(B)(3), Rules of Professional Conduct.

78. Respondent did not disburse any settlement proceeds to Lam, before the balance in his CTA dipped to the sum of -\$5,227.15 on October 21, 2013. Respondent intentionally misappropriated the settlement funds received on behalf of Lam.

79. On July 14, 2014, Lam submitted her complaint to the State Bar.

80. On September 9, 2014, respondent paid \$10,750 to Lam after being notified of her complaint.

CONCLUSIONS OF LAW:

81. By accepting representation of Lam without informing them of the actual and reasonably foreseeable adverse consequences of representing her and the other Brock plaintiffs in the same litigation, respondent failed to obtain the informed written consent of the client in willful violation of Rules of Professional Conduct, rule 3-310(C)(1).

82. By failing to maintain the sum of \$10,750 in his CTA on behalf of Lam, respondent failed to maintain a balance of the sum of \$10,750 received on behalf of Lam in his CTA in willful violation of Rules of Professional Conduct, rule 4-100(A).

83. By misappropriating the sum of \$10,750 from Lam, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

84. By failing to prepare and maintain a written ledger for the Brock plaintiffs, a written journal for his CTA, or the monthly reconciliations for the written ledger, written journal, and bank statements, respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

Case No. 14-O-05564(Complainant: Dory Ramos)

FACTS:

85. In March 2010, Dory Ramos ("Ramos") and other homeowners (collectively the "Delery plaintiffs") employed respondent to file a construction defect case on their behalf.

86. Respondent did not obtain Ramos' informed written consent to represent the interests of all of the Delery plaintiffs, which were potentially conflicting because the damages each suffered and the share each would receive of any settlement had not been determined at the time that they employed respondent.

87. Between July 2012 and July 2013, respondent settled the damages sustained by the Delery plaintiffs with certain defendants for \$79,522.84.

88. On October 31, 2013, respondent sent a letter to Ramos that stated that certain defendants had agreed to settle and enclosed a "Global Settlement Breakdown." The Breakdown stated that: (A) Ramos' share of the settlement was \$7,151.15; (B) her pro rata share of attorney's fees and costs was \$749.57; and (C) her pro rata share of expert fees was \$4,391.58, which left a balance of \$2,000 as her portion of the settlement.

89. Between September 2012 and July 2013, respondent received settlement checks from the settling defendants, which he deposited into his client trust account ("CTA"). After subtracting his contingency fee, costs, expert fees and payments to the other Delery plaintiffs, respondent was required to maintain in his CTA the sum of \$2,000 on behalf of Ramos.

90. On April 3, 2014, Ramos received a \$2,000 CTA check from respondent dated March 5, 2014. Due to a medical condition, Ramos was unable to retrieve her mail and the check became void 90-days after it was dated.

91. Respondent did not prepare and maintain a written ledger for of the Delery plaintiffs, a written journal for each client trust account, or the monthly reconciliations required by rule 4-100(B)(3), Rules of Professional Conduct.

92. On April 8, 2014, the balance in respondent's CTA dipped to the sum of -\$7,068.59. Respondent intentionally misappropriated the settlement funds received on behalf of Ramos.

93. On August 23, 2014, respondent paid a \$2,000 CTA check to Ramos, which was prior to her complaint to the State Bar.

CONCLUSIONS OF LAW:

94. By accepting representation of Ramos without informing her of the actual and reasonably foreseeable adverse consequences of representing her and the other Delery plaintiffs in the same litigation, respondent failed to obtain the informed written consent of the clients in willful violation of Rules of Professional Conduct, rule 3-310(C)(1).

95. By failing to maintain the sum of \$2,000 in his CTA on behalf of Ramos, respondent failed to maintain a balance of the sum of \$2,000 received on behalf of Ramos in his CTA in willful violation of Rules of Professional Conduct, rule 4-100(A).

96. By misappropriating the sum of \$2,000 from Ramos, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

97. By failing to prepare and maintain a written ledger for the Delery plaintiffs, a written journal for his CTA, or the monthly reconciliations for the written ledger, written journal, and bank statements, respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's multiple failures to obtain the informed written consent of clients, failures to maintain entrusted funds, misappropriations, and failures to maintain the required CTA records, and entering into a business transaction with a client constitute multiple acts of misconduct. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646 [two counts of client abandonment and failing to cooperate in a State Bar investigation supported a finding of multiple acts of misconduct].)

Failure to Make Restitution (Std. 1.5(i)): Although he has paid restitution totaling \$30,193.57 in six of the seven matters, and principle and interest totaling \$178,925.38 in the seventh matter, respondent has failed to make restitution of \$748,265.62 in the seventh matter to Jefferson Pointe POA.

MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

No Prior Discipline: Respondent has been an attorney since 1976, and has no record of discipline. However, respondent failed to maintain and misappropriated significant sums of money from numerous clients, which are significant acts of misconduct, and therefore, his lack of prior discipline is entitled to only limited mitigation. (See *Friedman v. State Bar* (1990) 50 Cal.3d 235, 242 [20 years in the practice of law without discipline is afforded significant weight in mitigation].)

Prefiling Stipulation: By entering into this stipulation prior to trial, respondent has acknowledged his wrongdoing and conserved the time and resources of the State Bar Court and State Bar. (See *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 most severe sanction applicable to Respondent’s misconduct is found in Standard 2.1(a), which applies to Respondent’s violation of Business and Professions Code section 6106 [moral turpitude – misappropriation]. Standard 2.1(a) provides disbarment for the intentional or dishonest misappropriation of entrusted funds, unless the amount is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case actual suspension of one year is appropriate.

Respondent's failure to maintain and misappropriation of \$30,193.57 in six of the matters is compounded by his failure to reimburse the entrusted funds to five of the six clients until after they submitted their complaints to the State Bar and his failure to reimburse \$748,265.62 belonging Jefferson Pointe POA.

Misappropriation of client funds breaches the high duty of loyalty owed to a client, violates basic notions of honesty, and endangers public confidence in the legal profession. (*Kelly v. State Bar* (1988) 45 Cal.3d 649; *McKnight v. State Bar* (1991) 53 Cal.3d 1025.) Misappropriation generally warrants disbarment. (*Kelly, supra*, 45 Cal. 3d 649.) Intentional misappropriation of entrusted funds, even without a prior record of discipline, warrants disbarment in the absence of compelling mitigation. (*Kaplan v. State Bar* (1991) 52 Cal. 3d 1067, 1071-1073.)

Although this is respondent's first discipline, the misconduct is extremely serious. In *Chang v. State Bar* (1989) 49 Cal. 3d 114, an attorney who took almost \$8,000 of his client's funds as fees without the client's knowledge or permission after representing to the client that his services would be free of charge, was disbarred. The fact that Chang had no prior record of discipline and the matter was an "isolated instance of misappropriation" was of no significance to the court. (*Id.* at 128-9.) That was because he had never acknowledged his impropriety, made no effort at reimbursing his client, and displayed a lack of candor. (*Id.*) Those factors made the likelihood he would engage in other misconduct sufficiently high to warrant disbarment. (*Id.*) Although Respondent reimbursed the \$30,193.57 that he misappropriated in six of the seven matters, he did so only after being contacted by the State Bar in five of those matters and still owes a significant amount of money to Jefferson Pointe POA.

As the Review Department noted in *In the Matter of Kueker* (1991) 1 Cal. State Bar Ct. Rptr. 583, 596 in which an attorney misappropriated \$66,000 along with other misconduct, any showing of rehabilitation less than a full reinstatement hearing, would be insufficient "to protect the public and maintain the integrity of the profession, give the extreme seriousness of the Respondent's offenses..." The concerns of the court apply in the present case as well. Disbarment is the only appropriate remedy to protect the public and the integrity of the profession.

Case law support this level of discipline for the amount misappropriated, even where the Respondent had no prior misconduct. (See *Baca v. State Bar* (1990) 52 Cal.3d 294, 304 [disbarment for \$2,300 misappropriated, no prior discipline]; and *Read v. State Bar* (1991) 53 Cal.3d 394, 426 [disbarment for \$4,100 misappropriated, no prior discipline].)

In consideration of the foregoing, disbarment is appropriate under the Standards and will serve the purpose of attorney discipline as set forth in Standard 1.1.

COSTS OF DISCIPLINARY PROCEEDINGS.

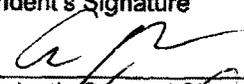
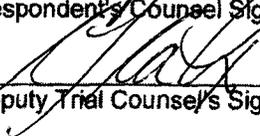
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 9, 2014, the prosecution costs in this matter are \$8,722.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: CLAYTON MARLOW ANDERSON, JR.	Case number(s): 14-O-02494, 14-O-03710, 14-O-03749, 14-O-03751, 14-O-04067, 14-O-04163, and 14-O-05564
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>11/9/15</u> Date	 Respondent's Signature	<u>CLAYTON ANDERSON</u> Print Name
<u>1-9-15</u> Date	 Respondent's Counsel Signature	<u>Anthony Radogna</u> Print Name
<u>1-16-15</u> Date	 Deputy Trial Counsel's Signature	<u>CHARLES T. FELIX</u> Print Name

(Do not write above this line.)

In the Matter of: CLAYTON MARLOW ANDERSON, JR.	Case Number(s): 14-O-02494 et seq.
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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.

1. On page 7 of the stipulation, numbered paragraph 17, "entered into a business transaction" is deleted and in its place is inserted "entering into a business transaction".
2. On page 8 of the stipulation, the first two lines of text at the top of the page are deleted as they are duplicative of the last two lines of text on the bottom of page 7.

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 CLAYTON MARLOW ANDERSON, JR., 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 2-9-15


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 10, 2015, 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:

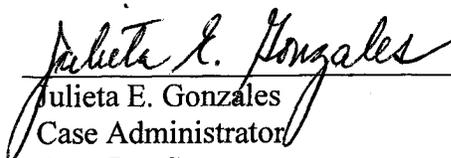
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ANTHONY P. RADOGNA
LAW OFFICES OF ANTHONY RADOGNA
1 PARK PLZ STE 600
IRVINE, CA 92614

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

Charles T. Calix, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 10, 2015.



Julieta E. Gonzales
Case Administrator
State Bar Court