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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Erica L. M. Dennings Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2285 Bar # 145755	Case Number(s): 14-O-4493 15-O-12103 15-O-10941	For Court use only PUBLIC MATTER FILED DEC 15 2015 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Vicki Young Law Offices of Ephraim Margolin 240 Stockton Street, #400 San Francisco, CA 94108-5300 (415) 421-4347 Bar # 73281	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: NICOLAS JOSON GOMEZ Bar # 144381 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 11, 1989.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 17 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Effective July 1, 2015)

Actual Suspension



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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(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) ☒ **Prior record of discipline**
- (a) ☒ State Bar Court case # of prior case **93-O-13449**
 - (b) ☒ Date prior discipline effective **May 4, 1996**
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **4-100(A)**
 - (d) ☒ Degree of prior discipline **private reproof**
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) ☐ **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.

- (8) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. See attachment to Stipulation, at p. 12
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See attachment to Stipulation, at p. 12.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

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- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pre-filing Stipulations: See attachment to Stipulation, at page 12.

D. Discipline:

(1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of **two (2) years**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:
- (b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **one (1) year**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general 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 present learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.
- In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.
- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (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:

☐ Substance Abuse Conditions

☐ Law Office Management Conditions

☐ Medical Conditions

☒ Financial Conditions

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- ☐ No MPRE recommended. Reason:
- (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:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: NICOLAS JOSON GOMEZ

CASE NUMBERS: 14-O-04493, 15-O-12103, 15-O-10941

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-4493 (Complainant: Robert Le)

FACTS:

1. On November 4, 2009, Robert Le ("Le") and his minor son were involved in an auto accident. Immediately after the accident, Le treated with a doctor and made a claim with the insurance company, which was denied. Le incurred about \$3000 in medical bills. Alex Wu, Le's friend and respondent's employee, referred Le to respondent.

2. On December 18, 2009, Le hired respondent to pursue any claims arising from the accident. Le never met with respondent. Between December 18, 2009 and June 28, 2010, respondent failed to take any further action(s) to pursue Le's case.

3. On June 28, 2010 respondent submitted a settlement demand to Farmers' Insurance Company on Le's behalf. Shortly after June 28, 2010, Farmers' denied Le's claim. Respondent did not inform Le that Farmers denied his claim. Respondent took no further steps to pursue Le's case after Farmers' denied the claim.

4. On October 14, 2015, respondent paid Le's chiropractor \$1000 which he had negotiated as full payment of his bill.

CONCLUSIONS OF LAW:

5. By failing to take steps to pursue Le's case between December 18, 2009 and June 28, 2010 and after the insurance company denied Le's claim, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

6. By not informing Le that Farmers' denied his claim, respondent failed to keep a client 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).

FACTS:

7. On October 13, 2013, Ernest Razon ("Razon") hired respondent to represent him in a personal injury matter arising out of an auto accident. Razon and respondent signed a contingency fee contract that provided respondent would receive 1/3 of settlement funds if the case settled before a lawsuit was filed.

8. On April 3, 2014 and July 7, 2014, Razon's insurer, Geico, disbursed medical payments of \$671 and \$1183.54, respectively to Razon. The checks were made payable to Razon and respondent. Respondent deposited these checks into respondent's client trust account ("CTA") at Bank of America, account number 00166430XXXX¹. Respondent resolved the bodily injury portion of the case for \$3224 and on December 8, 2014 deposited the \$3224 draft into his CTA. Respondent received and deposited a total of \$5078.54 on behalf of Razon. Respondent was obligated to maintain \$3385.50 in his CTA on behalf of Razon. Respondent was entitled to \$1692.74 as attorney's fees.

9. Respondent failed to inform Razon that he received settlement funds and failed to promptly disburse money to Razon or on his behalf. By January 21, 2015, respondent's CTA balance was -\$24.27 and respondent had not distributed any funds to Razon or on his behalf. Respondent intentionally misappropriated Razon's funds and used them for his own benefit.

10. On April 13, 2015, Razon filed a complaint against respondent with the State Bar.

11. On May 7, 2015, after notification from State Bar of Razon's complaint, respondent paid Razon \$884 and Razon's chiropractor \$1340.

12. On November 9, 2015, respondent disbursed \$661.50 to Razon. On November 10, 2015 respondent disbursed \$500 to Geico as reimbursement for medical payments.

CONCLUSIONS OF LAW:

13. By not notifying Razon that he received settlement funds on his behalf, respondent failed to promptly notify a client of receipt of settlement funds in willful violation of Rules of Professional Conduct, rule 4-100(B)(1).

14. By not disbursing Razon's funds for more than six months and after Razon filed a complaint with the State Bar of California, respondent failed to promptly disburse client funds in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

15. By not maintaining \$3385.50 in trust for Razon, respondent failed to maintain client funds in trust in willful violation of Rules of Professional Conduct, rule 4-100(A).

16. By intentionally misappropriating \$3385.50 of Razon's funds, respondent committed an act of moral turpitude in willful violation of Business and Professions Code, section 6106.

¹ The complete account number is redacted for privacy purposes.

Case 15-O-12103

17. While reviewing the CTA in the Razon matter, the following information was obtained:

18. On October 24, 2014, respondent disbursed a total of \$670 to himself as attorneys fees from other clients' funds via checks which contained notes on the memo lines that stated "W.C.²." On November 3, 2014, respondent deposited a settlement check from Farmers' Insurance made payable to respondent and W.C. in the sum of \$4,000 into respondent's CTA on behalf of W.C.

19. On November 7, 2014, respondent wrote a check to himself for \$300 as attorneys fees from other clients' funds which contained a note on the memo line that stated "R.V".

20. On November 12, 2014, respondent wrote three checks to himself for \$290 as attorneys fees from other clients' funds which contained notes on the memo line that stated "E.V".

21. On November 13, 2014, respondent deposited settlement checks from Farmers' Insurance made payable to respondent's clients, R.V. and E.V, in the sum of \$4,500 and \$5,000, respectively into respondent's CTA.

22. Between November 21 and December 4, 2014, respondent wrote three checks to himself totaling \$1,100 as attorney's fees from other clients' funds which contained notes on the memo line that stated "L.B".

23. Between November 21 and December 5, 2014, respondent wrote five checks to himself totaling \$1,290 as attorney's fees from other client's funds which contained notes on the memo lines that stated "M.B."

24. On December 11, 2014, respondent deposited three settlement checks in the total amount of \$5,275 from State Farm Mutual Automobile Insurance Company made payable to respondent's clients, L.B and M.B into respondent's CTA.

25. Between June 2014 and April 2015, respondent withdrew \$3080 cash from the ATM from funds in respondent's CTA which were earned fees that respondent had not withdrawn for the payment of personal expenses, as follows:

<u>DATE OF TRANSACTION</u>	<u>TRANSACTION</u>	<u>AMOUNT</u>
10/2/14	ATM Cash Withdrawal	\$300
10/3/14	ATM Cash Withdrawal	\$100
10/6/14	ATM Cash Withdrawal	\$20
10/6/14	ATM Cash Withdrawal	\$200
10/9/14	ATM Cash Withdrawal	\$20

² Initials are used to protect the identity of the non-complaining clients.

<u>DATE OF TRANSACTION</u>	<u>TRANSACTION</u>	<u>AMOUNT</u>
10/10/14	ATM Cash Withdrawal	\$100
10/14/14	ATM Cash Withdrawal	\$100
10/2/14	ATM Cash Withdrawal	\$300
10/14/14	ATM Cash Withdrawal	\$200
10/17/14	ATM Cash Withdrawal	\$20
10/20/14	ATM Cash Withdrawal	\$220
10/23/14	ATM Cash Withdrawal	\$20
10/24/14	ATM Cash Withdrawal	\$100
10/27/14	ATM Cash Withdrawal	\$40
11/3/14	ATM Cash Withdrawal	\$200
11/10/14	ATM Cash Withdrawal	\$60
11/10/14	ATM Cash Withdrawal	\$20
11/13/14	ATM Cash Withdrawal	\$140
11/17/14	ATM Cash Withdrawal	\$20
11/18/14	ATM Cash Withdrawal	\$140
11/21/14	ATM Cash Withdrawal	\$20
11/24/14	ATM Cash Withdrawal	\$40
11/25/14	ATM Cash Withdrawal	\$100
11/28/14	ATM Cash Withdrawal	\$20
11/28/14	ATM Cash Withdrawal	\$20
12/1/14	ATM Cash Withdrawal	\$20
12/1/14	ATM Cash Withdrawal	\$140
12/1/14	ATM Cash Withdrawal	\$20
12/8/14	ATM Cash Withdrawal	\$40
12/8/14	ATM Cash Withdrawal	\$200
12/11/14	ATM Cash Withdrawal	\$20
12/11/14	ATM Cash Withdrawal	\$380

<u>DATE OF TRANSACTION</u>	<u>TRANSACTION</u>	<u>AMOUNT</u>
12/12/14	ATM Cash Withdrawal	\$20
12/15/14	ATM Cash Withdrawal	\$20

CONCLUSIONS OF LAW:

26. By repeatedly withdrawing attorneys fees from other clients funds prior to depositing settlement funds, respondent failed to maintain client funds in wilful violation of Rules of Professional Conduct, rule 4-100(A).

27. By intentionally misappropriating \$3650 from other clients' funds as attorneys fees, respondent committed an act of moral turpitude in wilful violation of Business and Professions Code, section 6106.

28. By leaving earned fees in his CTA and repeatedly withdrawing funds through ATM withdrawals, respondent commingled personal funds in his CTA in willful violation of Rules of Professional Conduct, rule 4-100(A).

Case No. 15-O-10941 (Complainant: Edgardo Guinto)

FACTS:

29. On November 15, 2013, Edgardo Guinto ("Guinto") hired respondent to represent him in a personal injury matter arising from a car accident. Guinto and respondent signed a written contingency fee contract for respondent's fee to be 1/3 of the settlement proceeds if the case settled before a lawsuit was filed. On December 2013, Farmers' Insurance sent a check for \$4261.91 to respondent on Guinto's behalf for property damage. Respondent sent the check directly to the body shop to pay for repairs to Guinto's car.

30. On January 17, 2014, respondent sent a demand letter to Farmers Insurance for \$23,000 to settle the case. On January 31, 2014, Farmers' made a counter offer of \$3468.25. Respondent took no steps to pursue Guinto's case between January 31, 2014 and mid-October 2014. In mid-October respondent sent Farmers' information it had requested regarding Guinto's treatment and lost wages. On October 30, 2014, Farmers' offered to settle for \$4178.65. Guinto called respondent every day from December 2014 through January 2015 leaving voicemail messages to determine the status of his case. Respondent failed to return Guinto's phone calls. Guinto went to respondent's office on January 22, 2015 during business hours, but the office was closed. Between January 2014 and February 2015, Guinto received collection notices from his chiropractor and from Kaiser.

31. On February 11, 2015, Guinto filed a complaint against respondent with the State Bar.

32. On April 27, 2015, after receiving notice of Guinto's State Bar complaint, respondent settled the matter for \$6400. Respondent deposited the \$6400 settlement draft into his CTA on June 12, 2015. Respondent disbursed \$2866 to Guinto with the understanding that Guinto would pay the Kaiser bill. Respondent disbursed \$1400 to Guinto's chiropractor.

CONCLUSIONS OF LAW:

33. By not responding to Guinto's telephone calls requesting the status of his case, respondent failed to respond promptly to his client's reasonable status inquiries that respondent received in a matter in which respondent agreed to provide legal services in willful violation of Business and Professions Code, section 6068(m).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Effective May 4, 1996, respondent was privately reproved for violation of rule 4-100(A) for failure to maintain funds in his CTA to pay a medical provider.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent misappropriated client funds, repeatedly commingled personal funds with funds being held for clients, failed to perform services in one client matter, failed to inform a client that he received settlement funds, and failed to respond to client inquiries.

ADDITIONAL FACTS RE: MITIGATING CIRCUMSTANCES:

MITIGATING CIRCUMSTANCES

Pre-filing Stipulation: Respondent is entitled to mitigation credit for entering into a stipulation with the Office of Chief Trial Counsel in the above referenced disciplinary matter prior to filing of Notice of Disciplinary Charges, thereby saving 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 conclusions of law].)

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 Silverton* (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. (Std. 1.7(b) and (c).)

Std. 1.7 (a) provides that if a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed. In this matter, respondent admits to committing ten acts of professional misconduct. The most severe sanction applicable to respondent's misconduct is found in Standard 2.1(a), which applies to respondent's intentional misappropriation of client funds in violation of Rules of Procedure 4-100(A) and Business and Professions Code, section 6106.

Std. 2.1 (a) provides that disbarment is the presumed sanction for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate.

Respondent's misconduct is serious because he misappropriated client funds, deprived his clients of their funds for many months and repeatedly commingled personal funds in his CTA. Additionally, respondent's misconduct is aggravated by a prior record of discipline for similar misconduct. Although the prior record of discipline is remote in time (1996), it involved a CTA violation, and therefore was serious enough that greater discipline is warranted in this matter. Respondent has disbursed all funds to clients that they are entitled to receive, albeit after the State Bar complaint was filed. Furthermore, from December 2014 to January 2015 respondent travelled to the Philippines for six weeks to take care of family matters. During that time, respondent did not work and therefore, his income was diminished. Upon his return from the Philippines, in February 2015, respondent moved his offices. The effect of the time in the Philippines and the office move affected respondent's ability to monitor his CTA and his cases properly. In mitigation, respondent is entitled to credit for entering into a pretrial stipulation.

Case law is instructive. In *Edwards v. State Bar* (1990) 52 Cal.3d 28, the Supreme Court imposed a one year actual suspension where the attorney intentionally misappropriated \$3000 of client funds, issued a check to a client drawn on insufficient funds, and commingled personal funds in his CTA. The attorney had no prior record of discipline; repaid the money before the State Bar complaint was filed, and did not engage in acts of deceit surrounding his misconduct. The Court found that the disbarment was not necessary to protect the public, the courts, and the legal profession. *Edwards* at p. 30.

This case is similar to *Edwards* in that respondent intentionally misappropriated client funds for his own benefit and repeatedly commingled his own funds in his CTA. Additionally, respondent has repaid the funds and did not engage in any acts of deceit toward his clients. He also cooperated fully in the State Bar proceedings.

Therefore, in balancing the serious and repetitive nature of the misconduct, the mitigating and aggravating factors as well as case law, a lengthy actual suspension will suffice to protect the public, the courts, and the legal profession. A one year actual suspension, two years stayed suspension, with two years' probation and financial conditions are appropriate in this case.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of November 18, 2015 the prosecution costs in this matter are \$5022. Respondent further acknowledges that should the stipulation be rejected, or relief from the stipulation be granted, the costs in this matter may increase due to 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: NICOLAS JOSON GOMEZ	Case Number(s): 14-O-4493, 15-O-12103, 15-O-10941
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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

- ☒ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- ☐ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- ☐ If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

- ☒ 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- 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**

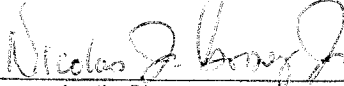


- ☒ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that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

(Do not write above this line.)

In the Matter of: NICOLAS JOSON GOMEZ	Case number(s): 14-O-4493, 15-O-12103, 15-O-10941
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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>Dec. 7, 2015</u> Date	 Respondent's Signature	<u>NICOLAS JOSON GOMEZ</u> Print Name
<u>Dec. 7, 2015</u> Date	 Respondent's Counsel Signature	<u>VICKI YOUNG</u> Print Name
<u>9 December 2015</u> Date	 Deputy Trial Counsel's Signature	<u>ERICA L.M. DENNINGS</u> Print Name

(Do not write above this line.)

In the Matter of:
NICOLAS JOSON GOMEZ

Case Number(s):
14-O-4493; 15-O-12103, 15-O-10941

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.

1. Throughout the stipulation, all references to "Nicolas Joson Gomez" are deleted, and in their place is inserted "Nicolas Joson Gomez, Jr.";
2. On page 9 of the stipulation, numbered paragraph 23, "Dcember 5, 2014" is deleted, and in its place is inserted "December 5, 2014";
3. On page 11 of the stipulation, numbered paragraph 27, "\$3650" is deleted, and in its place is inserted "\$3650 (this figure represents the sum of respondent's CTA withdrawals before settlement checks were deposited into his CTA)"; and
4. On page 15 of the stipulation, the "X" in the last box in the section labeled "a. Restitution" is deleted.

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

Dec. 15, 2015


LUCY ARMENDARIZ
Judge of the State Bar Court

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): **Case No. 14-O-4493; 15-O-12103; 15-O-10941**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that:

on the date shown below, I caused to be served a true copy of the within document described as follows:

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



By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco.



By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))



By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').



By Fax Transmission: (CCP §§ 1013(e) and 1013(f))

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.



By Electronic Service: (CCP § 1010.6)

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.



(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at San Francisco, addressed to each: (see below)



(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,
Article No.: _____ at San Francisco, addressed to: (see below)



(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,
Tracking No.: _____ addressed to: (see below)

Person Served

Business-Residential Address

Fax Number

COUNSEL COPY:

Vicki Young

240 Stockton Street, #400
San Francisco, CA 94108

Electronic Address

vickiyoung@yahoo.com

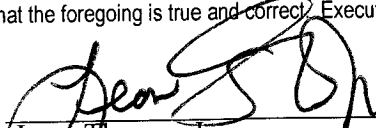
I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

DATED: December 10, 2015

SIGNED:


Leon Thomas, Jr.
Declarant

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 December 15, 2015, I deposited a true copy of the following document(s):

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

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

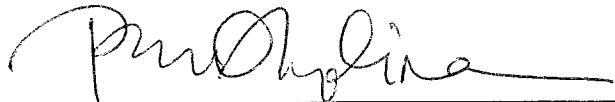
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

VICKI HUI-WEN YOUNG
240 STOCKTON ST # 400
SAN FRANCISCO, CA 94108

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

ERICA L. M. DENNINGS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 15, 2015.



Bernadette C.O. Molina
Case Administrator
State Bar Court