

ORIGINAL

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State Bar Court of California Hearing Department Los Angeles DISBARMENT		
Counsel For The State Bar Charles T. Calix Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1255 Bar # 146853	Case Number(s): 14-O-04536 - DFM	For Court use only FILED JUN 26 2015 STATE BAR COURT CLERK'S OFFICE LOS ANGELES PUBLIC MATTER
Counsel For Respondent Paul J. Virgo Century Law Group 5200 West Century Boulevard, Suite 940 Los Angeles, CA 90045 (310) 666-9701 Bar # 67900	Submitted to: Settlement Judge Assigned 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: RANDALL G. LEVINE Bar # 214393 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 **July 23, 2001**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **(10)** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."



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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. **See Attachment at page 7.**
- (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 7.**
- (8) ☐ **Restitution:** Respondent failed to make restitution.
- (9) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.

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(13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Discipline: See Attachment at page 8.

D. Discipline: **Disbarment.**

E. Additional Requirements:

- (1) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (2) ☐ **Restitution:** Respondent must make restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____. If the Client Security Fund has reimbursed _____ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than _____ days from the effective date of the Supreme Court order in this case.
- (3) ☐ **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: RANDALL G. LEVINE

CASE NUMBER: 14-O-04536 - DFM

FACTS AND CONCLUSIONS OF LAW.

Randall G. Levine ("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-04536 (Complainant: Marcela Huerta Robles)

FACTS:

1. On July 15, 2012, Marcela Huerta Robles ("Robles") was involved in an automobile accident with Jose Mijangos. Robles hired respondent to represent her with regard to her damages from the accident.
2. On May 9, 2013, respondent received a settlement check for \$56,750 from Mijangos' insurance carrier.
3. On May 20, 2013, respondent deposited the settlement check for \$56,750 into his client trust account with Bank of American, Account No. **** * 1596 ("CTA"). Respondent was entitled to contingency fees of \$22,700, which required him to maintain \$34,050 in trust for Robles.
4. Between May 20, 2013 and June 27, 2013, respondent withdrew his contingency fees in numerous amounts as needed.
5. Between May 2013 and November 2013, Robles requested on approximately three occasions that respondent distribute her share of the settlement proceeds to her. Respondent did not distribute Robles' share of the settlement proceeds to her or distribute them on her behalf.
6. Between September 6, 2013 and July 3, 2014, the balance in respondent's CTA fell below the sum of \$34,050 being held on behalf of Robles. On October 8, 2013, the balance in the CTA was approximately \$5,122.10. On May 13, 2014, the balance was approximately \$1,084.15. On July 3, 2014, the balance was approximately \$1,075.68.
7. Respondent dishonestly misappropriated \$32,974.32 of the \$34,050 he held in trust for Robles.
8. On August 7, 2014, Robles submitted a complaint to the State Bar alleging, inter alia, that respondent had failed to distribute her share of the settlement proceeds to her.
9. On September 2, 2014, Robles called and spoke with respondent about distributing her share of the settlement proceeds. Respondent told Robles that he would distribute her share of the settlement proceeds to her.

10. On September 9, 2014, Robles signed a settlement distribution worksheet prepared by respondent wherein she agreed to disburse the settlement proceeds by disbursing \$22,700 for respondent's contingency fee, \$15,271.98 for Robles' health care providers, and \$16,830 for Robles.

11. On September 9, 2014, respondent sent a CTA check to Robles for \$16,830. On September 17, 2014, respondent sent a CTA check to Robles for \$3,000. Altogether, respondent paid \$19,830 to Robles.

12. On December 11, 2014, the State Bar sent a letter to respondent requesting that he respond to allegations of misconduct in this matter. Respondent received the letter.

13. Between January 15, 2015 and February 13, 2015, respondent made payments to Robles' health care providers totaling \$14,343.98 from personal funds he deposited into his CTA for that purpose.

CONCLUSIONS OF LAW:

14. By withdrawing his contingency fees in numerous amounts as needed between May 20, 2013 and June 27, 2013, respondent failed to withdraw funds from his CTA at the earliest reasonable time after respondent's interest in the funds became fixed, in willful violation of Rules of Professional Conduct, rule 4-100(A)(2).

15. By failing to maintain a balance of \$34,050 on behalf of Robles in his CTA, respondent wilfully violated Rules of Professional Conduct, rule 4-100(A).

16. By failing to pay any portion of Robles' settlement proceeds to her or her health care providers between May 20, 2013 and September 6, 2014, respondent failed to promptly pay any portion of the \$34,050 to Robles or her health care providers that was in his possession in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

17. By dishonestly misappropriating for his own purposes \$32,974.32 held in his client trust account for Robles between September 6, 2013 and July 3, 2014, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's commingling, failure to maintain, failure to promptly pay, and misappropriation of \$32,974.32 constitute multiple acts of misconduct.

Harm (Std. 1.5(f)): Respondent's misappropriation of \$32,974.32, and refusal to promptly pay caused significant harm to Robles by depriving her of funds that she needed for living expenses.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent has been an attorney since July 2001, but was inactive between January 1, 2002 and August 29, 2006. He has no record of discipline during the 10 years that he was an active member, which is entitled to mitigation. (See *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [attorney's practice of law for more than 10 years' worth significant weight in mitigation].) However, the mitigation is tempered due to the serious nature of the present misconduct. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

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. (Stds. 1.7(b) and (c).)

Standard 2.1(a) states that disbarment is appropriate for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or the most compelling circumstances clearly predominate, in which case actual suspension of one year is appropriate. This Standard applies to respondent's misappropriation of the \$32,974.32 held in trust for Robles. The misappropriation is not insignificantly small and there are no compelling mitigating factors.

Respondent's misappropriation is compounded by his commingling, failure to maintain, and failure to promptly pay.

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.*) This is similar to the misconduct at hand as respondent misappropriated his client's funds and only paid the amount withheld to pay her health care providers after receiving notice of the State Bar investigation.

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.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of May 13, 2015, the prosecution costs in this matter are \$3,584. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of:
RANDALL G. LEVINE

Case number(s):
14-O-04536 - DFM

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.

Date	<u>6/8/2015</u>	<u>[Signature]</u>	Randall G. Levine
		Respondent's Signature	Print Name
Date	<u>6/9/2015</u>	<u>Paul J. Virgo</u>	Paul J. Virgo
		Respondent's Counsel Signature	Print Name
Date	<u>6-22-2015</u>	<u>[Signature]</u>	Charles T. Calix
		Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:
RANDALL G. LEVINE

Case Number(s):
14-O-04536 - DFM

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.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

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

Date

6/25/15

Judge of the State Bar Court



DONALD F. MILES

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 June 26, 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 – DISBARMENT**

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

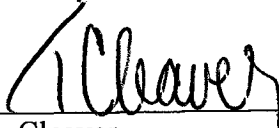
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**PAUL JEAN VIRGO
9909 TOPANGA BLVD # 282
CHATSWORTH, CA 91311**

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

CHARLES CALIX, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 26, 2015.



Tammy Cleaver
Case Administrator
State Bar Court