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State Bar Court of California Hearing Department San Francisco DISBARMENT		
Counsel For The State Bar Robin Brune Senior Trial Counsel 180 Howard Street San Francisco, California 94105 (415) 538 2218 Bar # 149481	Case Number(s): 14-O-06097	For Court use only <div style="text-align: center; font-weight: bold; font-size: 1.2em;">PUBLIC MATTER</div> <div style="text-align: center; font-weight: bold; font-size: 1.5em;">FILED</div> <div style="text-align: center; font-weight: bold; font-size: 1.2em;">DEC 16 2015</div> STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Jeffrey David Tochterman 804 48 th Street Sacramento, California 95819 (916) 223-7185 Bar # 170466	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: JEFFERY DAVID TOCHTERMAN Bar # 170466 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 **June 6, 1994**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **(10)** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

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

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case **10-O-10918**.
 - (b) Date prior discipline effective **December 13, 2015**.
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct, rule 1-320(A) [fee-splitting]**.
 - (d) Degree of prior discipline **Two years of suspension, stayed, two years probation, including eighteen months of actual suspension and until payment of restitution of \$56,000 to the U.S. Bankruptcy Trustee and \$2,500 to Javier and Gloria Contreras.**
 - (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.

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- (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, p. 8.**
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Lack of Candor/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, p. 8.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution. See Attachment, p.8.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable. See Attachment, p. 8.
- (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. **See Attachment, p. 8.**
- (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.

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

Additional mitigating circumstances: Pre-filing Stipulation, See Attachment, p. 8.

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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 **Maricela Meza** in the amount of \$ **7,125** plus 10 percent interest per year from **January 9, 2015**. If the Client Security Fund has reimbursed **Maricela Meza** 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 **90** days from the effective date of the Supreme Court order in this case.

- (3) **Other:**

9. On December 30, 2013, respondent submitted his Rule 9.20 Compliance Declaration to the State Bar Court. In his Declaration, respondent signed, under penalty of perjury, attesting to the fact that, as of the date the Rule 9.20 Declaration was filed (January 3, 2014), he had no clients.
10. In truth and in fact, respondent never substituted out or withdrew from the Meza lawsuit and respondent did not notify the Mezas, Sacramento Superior Court, or opposing counsel in the Meza lawsuit, that he had been suspended from the practice of law. The Meza lawsuit was still pending as of the date respondent filed his 9.20 affidavit.
11. On January 9, 2015, Maricela Meza obtained a small claims judgment against respondent in the principal sum of \$7,000 plus costs of \$125 for a total judgment of \$7,125. Respondent has actual knowledge of the judgment.
12. On August 12, 2015, the Court dismissed the Meza lawsuit for failure to bring the case to trial within five years.

CONCLUSIONS OF LAW:

13. By abandoning the Mezas and taking no further action on the Meza lawsuit after filing a notice of change of address on April 20, 2012, respondent intentionally failed to perform legal services with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).
14. By failing to inform the Mezas of the \$2,940 sanction imposed against them by the Sacramento Superior Court on September 21, 2011, and respondent's suspension from the practice of law on December 13, 2013, respondent failed to keep his clients reasonably informed of significant developments in a matter in which the respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).
15. By failing to provide notice of his suspension to Sacramento Superior Court, the Mezas, and opposing counsel in the Meza lawsuit, respondent willfully violated California Rules of Court, rule 9.20.
16. By stating to the State Bar Court, in his 9.20 affidavit of December 13, 2013, that he did not represent any clients in pending matters, when in fact respondent was counsel of record for the Mezas in the Meza lawsuit, respondent was grossly negligent in not knowing the statement was false, and thereby committed an act involving moral turpitude, in willful violation of Business and Professions Code, section 6106.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): By way of Supreme Court Order no. S199711, dated November 13, 2013, respondent was actually suspended from the practice of law for 18 months and until he paid \$2,500 in restitution to former clients, Javier and Gloria Contreras, and \$56,000 in restitution to Bankruptcy Trustee, Susan K. Smith (Case No. 10-O-10918). The stipulated violation was for violation of Rule 1-320(A) (fee sharing with a non-lawyer). Respondent was also ordered to comply with California Rules of Court, rule 9.20. Respondent filed the original stipulation in his prior disciplinary matter, case no. 10-O-10918, on November 30, 2011. However, the matter did not fully resolve until the Supreme Court issued an order on November 13, 2013.

Harm (Std. 1.5(f)): The Mezas suffered significant harm. Their lawsuit was dismissed on procedural grounds and they have an unpaid judgment against respondent in the sum of \$7,125.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent is culpable of four disciplinary violations, demonstrating multiple acts of misconduct.

Failure to Make Restitution (Std. 1.5(i)): Respondent has made no payments to the Mezas on their outstanding small claims judgment against him.

High Level of Vulnerability of Victim (Std. 1.5(h)): The Mezas were facing foreclosure when they obtained respondent's legal services.

MITIGATING CIRCUMSTANCES.

Candor/Cooperation (Std. 1.6(e)): Respondent has been candid and cooperative with the State Bar in this matter.

Pre-filing Stipulation: Respondent is stipulating to disbarment prior to the State Bar filing a Notice of Disciplinary Charges (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

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

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

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

In this matter, respondent admits to committing four acts of professional misconduct. Standard 1.7(a) requires that where a respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

The most severe sanction applicable to respondent's misconduct is found in Standard 2.12, which calls for disbarment or actual suspension for violation of a court order related to the member's practice of law, and applies to respondent's violation of California Rules of Court, rule 9.20. Here, respondent abandoned the Meza lawsuit after filing a change of address with the Court in April, 2012. In December, 2013, respondent falsely attested to complying with his rule 9.20 conditions when in fact he had not notified the Mezas, opposing counsel, or the Court in the Meza litigation, of his suspension from the practice of law. Respondent further did not advise the Mezas of significant developments in their matter. Respondent's misconduct goes to the fundamental issue of public protection: "In every case [rule 9.20] performs the critical prophylactic function of ensuring that all concerned parties-including clients, co-counsel, opposing counsel or adverse parties, and any tribunal in which litigation is pending-learn about an attorney's discipline. *Lyndon v. State Bar* (1988) 45 Cal. 3d. 1181, 1187. In aggravation, respondent's prior disciplinary matter was pending at the time he abandoned the Mezas, and his prior disciplinary matter was final when he committed his 9.20 violations; respondent committed multiple acts of misconduct; respondent's misconduct affected vulnerable clients who were facing foreclosure; and respondent's misconduct resulted in significant harm to the clients. Respondent has also failed to pay restitution to the clients who hold a small claims judgment against him for \$7,125. In mitigation, respondent has readily admitted to the misconduct and has entered into a stipulation prior to the filing of the Notice of Disciplinary Charges. Under the circumstances, the high range of discipline for the standard is warranted. Disbarment is appropriate to protect the public and the profession, and is consistent with well-established case law for violations of California Rules of Court, rule 9.20. *Lyndon v. State Bar* (1988) 45 Cal. 3d. 1181; *Bercovich v. State Bar* (1990) 50 Cal. 3d. 116.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of November 17, 2015, the prosecution costs in this matter are \$3,066. 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: JEFFREY DAVID TOCHTERMAN	Case Number(s): 14-O-06097
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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:

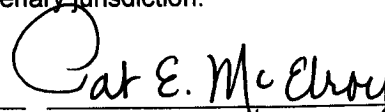
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

1. On p. 1, the name "JEFFERY" is corrected to read "JEFFREY"; and
2. On p. 2, B. (1)(b), the prior discipline effective date "December 13, 2015" is corrected to read "December 13, 2013."

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.

December 16, 2015
Date


PAT E. McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on December 16, 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 San Francisco, California, addressed as follows:

JEFFREY D. TOCHTERMAN
804 48TH ST
SACRAMENTO, CA 95819

- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- by overnight mail at , California, addressed as follows:

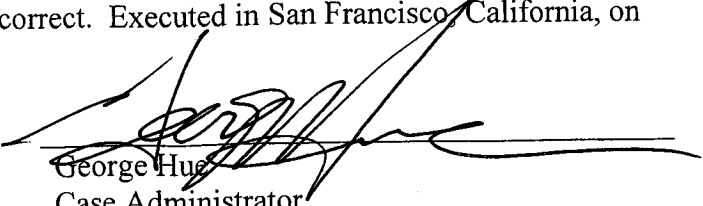
- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Robin Brune, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 16, 2015.


George Hug
Case Administrator
State Bar Court