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State Bar Court of California Hearing Department Los Angeles PROBATION VIOLATION		
Counsel For The State Bar Terrie Goldade 845 S. Figueroa St. Los Angeles, CA 90017-2515 Bar # 155348	Case Number(s): 14-PM-03854	For Court use only <div style="text-align: center;"> FILED OCT - 8 2014 <i>[Signature]</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent David Andrew Luna 3540 Wilshire Blvd #417 Los Angeles, CA 90010 Bar # 61953	<div style="text-align: center; font-size: 2em; font-weight: bold;">PUBLIC MATTER</div>	
In the Matter of: David Andrew Luna Bar # 61953 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PROBATION VIOLATION—"PM" PROCEEDING <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

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A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 20, 1974**.
- (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 **9** 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".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

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- (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 are added to membership fee for calendar year following effective date of discipline (no actual suspension).
 - ☐ 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 (actual suspension).
 - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: **2016 and 2017**. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.

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

- (1) ☒ **Prior record of discipline**
- (a) ☒ State Bar Court case # of prior case **12-O-12607**
 - (b) ☒ Date prior discipline effective **July 24, 2013**
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **RPC rules 3-110(A), 4-100(B)(3), 3-700(D)(2); SBA sections 6068(m), 6068(i).**
 - (d) ☒ Degree of prior discipline **one year, stayed, 2 years probation (no actual suspension)**
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (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.
- (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. **Multiple violations of probation.**

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

Additional mitigating circumstances:

See stipulation attachment, page 7.

D. Discipline (choose only one):

- (1) ☐ **Probation extended:** Respondent's probation in _____ is extended for _____.
- (2) ☒ **Probation revoked; Probation Reinstated; Actual Suspension:** Respondent's probation is revoked and reinstated for 2 years on the same terms and conditions as previously imposed in **12-O-12607**. The terms of probation remain the same as in the prior order except as indicated below. In addition, Respondent must be actually suspended from the practice of law for **30 days**.
- (3) ☐ **Probation revoked; Probation Reinstated; No Actual Suspension:** Respondent's probation is revoked and reinstated for _____ on the same terms and conditions as previously imposed in _____. The terms of probation remain the same as in the prior order except as indicated below.
- (4) ☐ **Probation revoked; Probation not Reinstated; Actual Suspension:** Respondent's probation is revoked. Respondent must be suspended from the practice of law for _____.

E. In addition to conditions previously imposed by the Supreme Court in its prior order, the following new conditions are recommended by this stipulation:

- (1) ☐ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (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 in each report 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.

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- (7) ☐ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☐ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☐ Probation Conditions Deleted or Modified: :
- (2) ☐ **Rule 9.20, California Rules of Court:** Respondent must comply with the provisions of subdivisions (a) and (c) of rule 9.20, California Rules of Court, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein.
- (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 provisions of subdivisions (a) and (c) of rule 9.20, California Rules of Court, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein.
- (4) ☐ Other:

Attachment language (if any):

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of the specified violations.

- 1. On February 26, 2013, the State Bar Court filed and served upon Respondent an Order Approving Stipulation re Facts, Conclusions of Law and Disposition and Order Approving Stayed Suspension in State Bar Court Case No. 12-O-12607 ("Stipulation").**
- 2. On June 24, 2013, the California Supreme Court filed Order No. S210013 (State Bar Court Case No. 12-O-12607) suspending Respondent from the practice of law for one year; execution of that period of suspension was stayed, and Respondent was placed on probation for two years subject to the conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on February 26, 2013.**
- 3. Among other conditions of probation, Respondent was ordered to (a) pay restitution to Chris Atkinson in the principal amount of \$7,500 plus interest of 10% per annum from May 2, 2011, and to provide satisfactory proof thereof to the Office of Probation by October 22, 2013; and (b) comply with the State Bar Act and Rules of Professional Conduct and to report such compliance, along with his compliance with all probation conditions, to the Office of Probation under penalty of perjury on or before January 10, April 10, July 10, and October 10 of every year during the period of probation ("quarterly reports").**
- 4. On July 3, 2013, the Office of Probation mailed a courtesy reminder letter to Respondent at his membership records address reminding him of the conditions and deadlines of his probation. Respondent received the letter.**
- 5. On October 7, 2013, the Office of Probation conducted an in-person meeting with Respondent, reviewing all of Respondent's conditions and deadlines.**
- 6. On October 16, 2013, Respondent requested and received from the Office of Probation a calculation as to how much interest he owed Chris Atkinson as of October 18, 2013. On October 17, 2013, Respondent mailed via regular first class mail, a check to Chris Atkinson for \$9,349.32. The check was cashed on October 31, 2013.**
- 7. On December 16, 2013, the Office of Probation mailed Respondent a letter noting that he had not provided proof of restitution, which had been due October 22, 2013.**
- 8. Respondent provided proof of his payment to Christ Atkinson on January 10, 2014 with his quarterly report. In that quarterly report, Respondent had checked the box stating that he was not in compliance and wrote in "N/A".**
- 9. On February 11, 2014, Respondent was informed that his quarterly report could not be filed because it did not make sense. It was not a clear and unequivocal statement of compliance, e.g. Respondent had not timely submitted his proof of restitution. Respondent was also informed that \$26.71 in interest had accrued between the interest calculation date (October 18, 2013) and the cashing date (October 31, 2013). Respondent stated that he would re-submit a quarterly report and that he would send a check to Chris Atkinson.**
- 10. The motion to revoke probation in this matter was filed and served on July 11, 2014.**
- 11. Respondent's quarterly report due January 10, 2014 was filed on August 26, 2014. His proof of restitution for \$26.71 was filed on September 26, 2014.**

Legal Conclusion: By failing to (1) timely file his quarterly report due by January 10, 2014; and (2) timely file proof of restitution due by October 22, 2013, Respondent willfully violated Business and Professions Code, section 6068(k).

OTHER CONDITION OF PROBATION ADDED

Within one year from the effective date of discipline in this matter, Respondent must submit to the Office of Probation satisfactory proof of completion of at least 6 hours of Minimum Continuing Legal Education (MCLE) approved courses in topics such as improving his communication skills with clients, avoiding procrastination and improving his ability to complete tasks, calendaring, etc. Respondent must submit course titles and descriptions to the Office of Probation and obtain its approval of the courses prior to taking them. In order that Respondent might obtain and use this information quickly, he will receive credit for completing any such courses any time after signing this stipulation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar of California).

OTHER CIRCUMSTANCES WHICH WERE CONSIDERED IN THE RESOLUTION OF THIS MATTER.

Respondent has provided documentation demonstrating health problems in relation to having an enlarged heart and irregular heartbeat. He has been attentive to this problem by admitting himself for hospitalizations for treatment and procedures on May 16, 2013; March 10, 2014; June 17, 2014; and July 17, 2014.

Respondent did not submit expert testimony establishing that Respondent's physical difficulties were directly responsible for his misconduct or that Respondent no longer suffered from the difficulties. (Standard 1.6(d) and In the Matter of Gadda (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443.) However, Respondent's health problems may have contributed to some of his failures to complete his probation conditions. Respondent asserts that he now has partnered with a lawyer friend who helps to monitor his practice if health conditions arise such that future misconduct will not occur.

Respondent now understands that he needs to comply with each condition on a timely basis; he understands that even if he experiences other problems, e.g. physical, he must file a motion for modification at his earliest opportunity if he will be unable to complete his conditions and continue to comply with his conditions until an order is filed modifying his conditions. Respondent now understands that proof of conditions is to be physically received by the Office of Probation by the deadline.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was September 16, 2014.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.10 states that actual suspension is appropriate for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the member's unwillingness or inability to comply with disciplinary orders.

An attorney who violated his probation by failing to timely complete restitution and by failing to timely attend Ethics School, received two years' probation with a condition that he was to be actually suspended for the first 30 days. In the Matter of Gorman (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567. Neither bad purpose nor intentional evil is required to establish willful violations of disciplinary probation. *Id.* at 572. An attorney's cooperation in stipulating to facts warrants some mitigative consideration. *Id.* More serious sanctions are assigned to probation violations closely related to reasons for imposition of previous discipline or to rehabilitation. *Id.* at 573-574.

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The probation conditions violated were related to his original misconduct, important for his rehabilitation, and were intended to assist the State Bar in monitoring Respondent's rehabilitation. However, in light of Respondent's circumstances (set forth above), it is agreed that the degree of discipline set forth in this stipulation is appropriate in relation to standard 2.10 based upon Respondent's stipulation to his violations, and his agreement to extend his probation in order to demonstrate his willingness to prove his rehabilitation.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Probation has informed respondent that as of September 16, 2014, the prosecution costs in this matter are \$2,344. 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.

WAIVER OF ANY VARIANCES

The parties stipulate to waive any variance in the language, allegations, and conclusions of law between this stipulation and the Motion to Revoke Probation filed on July 11, 2014. Respondent acknowledges that this stipulation contains language, allegations, and a conclusion of law which may differ from the language, allegations, and conclusion of law contained in the Motion to Revoke Probation filed on July 11, 2014. The parties further stipulate to waive the right to have any amendment to the Motion to Revoke Probation.

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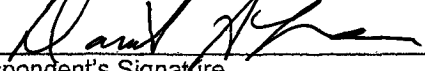
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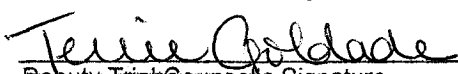
In the Matter of:
David Andrew Luna

Case number(s):
14-PM-03854

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.

9-26-14  David Andrew Luna
Date Respondent's Signature Print Name

9.29.14  Terrie Goldade
Date ~~Deputy Trial Counsel's~~ Signature Print Name
Supervising Attorney

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In the Matter of: DAVID ANDREW LUNA	Case Number(s): 14-PM-03854
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PROBATION VIOLATION 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 5 of the stipulation, an "X" is inserted in the box next to paragraph F.(4), and next to the word "Other:" is inserted, "As an additional condition of probation, respondent is required to provide the Office of Probation with satisfactory proof of completion of six hours of Minimum Continuing Legal Education approved courses within one year from the effective date of discipline in this matter. See the first full paragraph on page 7 of the stipulation for additional details and requirements pertaining to this condition."

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.)**

OCTOBER 6, 2014
Date


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 October 8, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PROBATION VIOLATION – “PM” PROCEEDING

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:

**DAVID ANDREW LUNA
3540 WILSHIRE BLVD #417
LOS ANGELES, CA 90010**

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

TERRIE GOLDADE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 8, 2014.



Tammy Cleaver
Case Administrator
State Bar Court