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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION			PUBLIC MATTER
Counsel For The State Bar Shane C. Morrison Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (323) 765-1000 Bar # 284115	Case Number(s): 15-O-12690; 15-O-13748	For Court use only <div style="font-size: 2em; font-weight: bold; margin: 10px 0;">FILED</div> <div style="font-size: 1.5em; font-weight: bold; margin: 5px 0;">JUN 17 2016 P.B.</div> <div style="font-size: 0.8em; font-weight: bold; margin: 5px 0;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>	
In Pro Per Respondent Edward William Pacheco Pacheco & Associates 5410 E Beverly Blvd #100 Los Angeles, CA 90022 (323) 727-7183 Bar # 91903	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: EDWARD WILLIAM PACHECO Bar # 91903 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 **May 30, 1980**.
- (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."



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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: **three billing cycles immediately following the effective date of the Supreme Court order in this matter.** (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 **94-PM-17578 (see Attachment to Stipulation at p. 13).**
 - (b) Date prior discipline effective **August 12, 1995.**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code section 6068(k).**
 - (d) Degree of prior discipline **One year of stayed suspension and probation until December 31, 1996.**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
Case nos. 91-O-03252 (see Attachment to Stipulation at pp. 12-13).
- (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.
- (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. 13.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution. See Attachment to Stipulation at p. 13.
- (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

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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 convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

**Personal and Physical Difficulties (see Attachment to Stipulation at p. 13).
Pretrial Stipulation (see Attachment to Stipulation at p. 13).**

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **two 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 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 **90 days**.
- 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

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- 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:

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- (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 checked="" type="checkbox"/> 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:**

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In the Matter of: EDWARD WILLIAM PACHECO	Case Number(s): 15-O-12690; 15-O-13748
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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
Laura Nunez	\$1,700	October 24, 2014

- 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";

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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.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: EDWARD WILLIAM PACHECO

CASE NUMBERS: 15-O-12690; 15-O-13748

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. 15-O-12690 (Complainant: Laura Nunez)

FACTS:

1. In May 2014, Laura Nunez employed Respondent to represent her in a bankruptcy matter.
2. On May 20, 2014, Nunez and her sister, Maria Teresa Vazquez, went to Respondent's office and gave Respondent advanced fees of \$1,000 in cash. Respondent accepted the cash and gave Nunez a receipt for the cash payment. There was no written fee agreement.
3. Nunez speaks Spanish only, so Vasquez provided translation assistance for Nunez and acted as her authorized agent for the purpose of communicating with Respondent about her case.
4. On June 14, 2014, Nunez paid Respondent an additional \$700 in cash as advanced fees, Respondent accepted the cash, and gave Nunez a receipt for the cash payment. Nunez also provided a \$360 money order, dated June 2, 2014, payable to the United States Bankruptcy Court for filing fees.
5. On August 11, 2014, Respondent filed a Chapter 7 bankruptcy petition on behalf of Nunez in the United States Bankruptcy Court, Central District of California, case no. 6:14-bk-20185-SY (*In re: Laura Nunez*). The petition did not include Official Form B203 (Disclosure of Compensation of Attorney for Debtor), indicating that Respondent received compensation for preparing the petition. Respondent failed to disclose to the bankruptcy court the fact that he had received compensation from Nunez, or that he was representing Nunez, as required by the rules of the bankruptcy court. (11 U.S.C. § 329(a); U.S.C.S. Bankruptcy Rule 2016(b).)
6. The court set a meeting of creditors in *In re: Laura Nunez* for September 18, 2014 and Respondent told Nunez that he would be present for that hearing.
7. On September 18, 2014, Nunez appeared at the meeting of creditors, but Respondent did not appear for that hearing. The Trustee informed Nunez that her bankruptcy petition was incomplete and informed Nunez that she needed to file certain missing documents (i.e., pay stubs). The Trustee continued the meeting of creditors to October 23, 2014 for Nunez to provide additional documentation. Respondent contacted Vasquez later that same day and told Vasquez that Respondent would fix the petition. Vasquez told Respondent that Nunez had to submit proof of employment.
8. Respondent did not, at any point, file the missing documents (i.e., pay stubs).

9. On September 26, 2014, the court in *In re: Laura Nunez* issued an order and notice of dismissal pursuant to Title 11 United States Code section 521, subdivision (i)(1), for failure to file copies of payment advices (i.e., pay stubs) required under Title 11 United States Code section 521, subdivision (a)(1)(B)(iv).

10. On October 23, 2014, Nunez attempted to appear at the continued meeting of creditors in *In re: Laura Nunez* and was informed by the Trustee that the petition had been dismissed on September 26, 2014. On October 23, 2014, Vazquez, on behalf of Nunez, called and left messages for Respondent on six occasions, at 9:01 a.m., 9:02 a.m., 10:36 a.m., 10:36 a.m., 10:37 a.m., and 10:58 a.m. Respondent received those messages but did not respond to any of them.

11. On October 24, 2014, Nunez with the assistance of Vazquez, sent a letter to Respondent terminating Respondent's employment and requesting a full refund of the advanced fees paid. Respondent received that letter but did not respond to it.

12. To date, Respondent has not rendered to Nunez an appropriate accounting of the \$1,700 in advanced fees that Respondent received from Nunez between May 20, 2014 and June 14, 2014.

13. To date, Respondent has not refunded to Nunez any portion of the \$1,700 in advanced fees that Respondent received from Nunez between May 20, 2014 and June 14, 2014.

CONCLUSIONS OF LAW:

14. By filing an incomplete Chapter 7 bankruptcy petition on behalf of his client, Laura Nunez, on August 11, 2014, by not appearing at a meeting of creditors on behalf of Nunez on September 18, 2014, and by allowing Nunez' bankruptcy petition to be dismissed on September 26, 2014 for failure to provide the necessary documents to complete the petition, Respondent intentionally, recklessly, or repeatedly failed to perform services with competence, and thereby willfully violated Rules of Professional Conduct, rule 3-110(A).

15. By preparing and filing a Chapter 7 bankruptcy petition on behalf of his client, Laura Nunez, in which respondent failed to include Form B203 (Disclosure of Compensation of Attorney for Debtor) and failed to disclose that he had received compensation of \$1,700 from Nunez to prepare the bankruptcy petition, as required by the rules of the bankruptcy court (11 U.S.C. § 329(a); U.S.C.S. Bankruptcy Rule 2016(b)), when Respondent knew that he had received compensation from Nunez to prepare the bankruptcy petition and when Respondent was grossly negligent in not knowing that he failed to disclose that material fact to the bankruptcy court, Respondent committed an act involving moral turpitude, dishonesty, or corruption, and thereby willfully violated Business and Professions Code section 6106.

16. By failing to respond promptly to six telephonic reasonable status inquiries made on behalf of his client, Laura Nunez, by the client's authorized agent, Maria Teresa Vasquez, on October 23, 2014 that Respondent received in a matter in which Respondent had agreed to provide legal services, Respondent willfully violated Business and Professions Code section 6068(m).

17. By failing to render an appropriate accounting to his client, Laura Nunez, of the \$1,700 in advanced fees that Respondent received from Nunez between May 20, 2014 and June 14, 2014 upon Nunez' written request for a full refund of the \$1,700 in advanced fees and termination of Respondent's

employment on October 24, 2014, Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

18. By failing to refund promptly to his client, Laura Nunez, any portion of the \$1,700 in advanced fees that Respondent received from Nunez between May 20, 2014 and June 14, 2014, which Respondent did not earn because Respondent filed an incomplete bankruptcy petition on behalf of Nunez and consequently the court dismissed the bankruptcy petition due to incompleteness, upon Nunez' written request for a full refund of the \$1,700 in advanced fees and termination of Respondent's employment on October 24, 2014, Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 15-O-13748 (State Bar Investigation)

FACTS:

1. On March 6, 2015, Membership Records notified Respondent that he had not paid his membership fees by sending him a Final Delinquent Notice. Respondent received that notice at his membership records address.
2. On May 21, 2015, the Supreme Court entered an order of suspension for those members appearing on the delinquent list, which included Respondent. The suspension order was to become effective July 1, 2015.
3. On May 29, 2015, Membership Billing Services mailed a copy of the Supreme Court's suspension order and notice of entry of the order to Respondent. Respondent received the order and the notice at his membership records address. In the notice, Respondent was warned that all current and accrued membership fees, penalties, and costs must be received by June 30, 2015 to avoid suspension. Respondent did not pay his membership fees by June 30, 2015.
4. On July 1, 2015, Respondent was suspended from the practice of law in California for non-payment of State Bar membership fees.
5. On July 31, 2015, Respondent appeared in court on behalf of a client at a hearing in a matter in Los Angeles County Superior Court, at which time the court notified Respondent that he was not entitled to practice law. Respondent substituted out of the case and the court continued the hearing to September 1, 2015 to allow Respondent's client to secure new counsel.
6. On August 5, 2015, Respondent sent payment of his membership fees to the State Bar, which was received on August 6, 2015. On August 6, 2015, Respondent was returned to active status with the State Bar.
7. On September 9, 2015, a State Bar investigator mailed a letter to Respondent requesting Respondent's response to the allegation that Respondent appeared in court while not entitled to practice. Respondent received that letter but did not provide a substantive response to it.
8. On November 4, 2015, a State Bar investigator called Respondent regarding the State Bar's investigation and left a message for Respondent to call the investigator. Respondent received that message but did not call the investigator in connection with it.

9. On November 9, 2015, a State Bar investigator faxed a copy of the State Bar's September 9, 2015 letter to Respondent that requested Respondent's response to the allegation that Respondent appeared in court while not entitled to practice. Respondent received that fax but did not provide a substantive response to it.

10. On November 10, 2015, a State Bar investigator called Respondent regarding the State Bar's investigation and left a message for Respondent to call the investigator. Respondent received that message but did not call the investigator in connection with it.

CONCLUSIONS OF LAW:

11. By appearing in court on behalf of a client at a hearing in a matter in Los Angeles County Superior Court on July 31, 2015 when Respondent was suspended from the practice of law for non-payment of State Bar membership fees, Respondent held himself out as entitled to practice law and actually practiced law when Respondent was not an active member of the State Bar of California, in willful violation of Business and Professions Code sections 6125 and 6126, and thereby willfully violated Business and Professions Code section 6068(a).

12. By failing to provide a substantive response to the State Bar's communications on September 9, 2015 and November 9, 2015 that requested Respondent's response to the allegations of misconduct being investigated in State Bar case no. 15-O-13748, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent, and thereby willfully violated Business and Professions Code section 6068(i).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(A)): Respondent has two prior records of discipline.

Case Nos. 91-O-03252, 91-O-03640, 92-O-11130, 92-O-15944, 92-O-15949, and 92-O-16073: Effective August 6, 1994, Respondent was placed on a one-year stayed suspension, a two-year probation, and a 45-day actual suspension. In case no. 91-O-03252, Respondent failed to complete a personal injury matter, which led to the dismissal of the case in December 1989, and failed to properly withdraw from the matter in violation of Rules of Professional Conduct, rule 3-110(A) and 3-700(A)(2), and failed to cooperate in the State Bar's investigation of the client's complaint in or about July 1991, in violation of Business and Professions Code section 6068(i). In case no. 91-O-03640, Respondent failed to perform in a second a personal injury matter, which led to the dismissal of the case in February 1990, and failed to inform the client of the dismissal of the case in violation of Rules of Professional Conduct, rule 3-110(A) and Business and Professions Code section 6068(m). In case no. 92-O-11130, sometime between October 1989 and March 1990, Respondent transferred a client's personal injury matter to another attorney without the client's knowledge or consent, and failed to respond to his client's status inquiries regarding the transfer of his case to other counsel and to another successor counsel's requests for the client's file in August 1991 in violation of Rules of Professional Conduct, rules 3-700(A)(2), 3-700(D)(1) and Business and Professions Code section 6068(m). In case nos. 92-O-15944, 92-O-15949, and 92-O-16073, Respondent failed to cooperate in the State Bar's investigation of three other clients' complaints in or about August 1992, in violation of Business and Professions Code section 6068(i). Respondent's misconduct was mitigated by: lack of a prior record of discipline in 13 years of practice; reliance on his spouse to manage his law practice books, calendar, payroll, taxes and other office management functions; emotional and professional upset related to his dissolution of marriage; transfer

of files to other attorneys to attempt to reduce his case load; and subsequent hiring of staff to perform the functions performed by his spouse. There were no aggravating factors.

Case No. 94-PM-17578: Effective August 12, 1995, Respondent was placed on a one-year stayed suspension and probation until December 31, 1996 for failing to submit a quarterly report and proof of joining the Law Practice Management Section of the State Bar in October 1994, in violation of Business and Professions Code section 6068(k). Respondent's prior record of discipline was an aggravating factor. In mitigation, Respondent suffered extreme emotional difficulties related to a family crises at the time of his misconduct and cooperated with the State Bar.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent committed numerous acts of professional misconduct.

Failure to Pay Restitution (Std. 1.5(m)): Respondent has not refunded to Nunez any portion of the \$1,700 in advanced fees that Respondent received from Nunez between May 20, 2014 and June 14, 2014.

MITIGATING CIRCUMSTANCES.

Personal and Physical Difficulties: On March 12, 2015, Respondent underwent surgery at the VA to repair a service-connected musculoskeletal injury and for several months after he experienced difficulty recovering and was on numerous drugs as a result. Respondent also suffers from several other chronic medical conditions. Due to those factors, Respondent was not monitoring mail at his membership records address. The notice and order regarding Respondent's administrative suspension were sent to Respondent during that time period and, as a result, he was unaware that he was suspended at the time he made the court appearance in case no. 15-O-13748. While Respondent's physical difficulties did not mitigate his misconduct in regards to the Nunez matter, which occurred prior to Respondent's surgery (see *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676 [evidence of severe emotional problems does not mitigate misconduct which arose prior to the triggering of the attorney's emotional difficulties]), he is entitled to some diminished weight in mitigation in regards to his unauthorized practice of law, which occurred after Respondent's surgery. (See *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47 [personal difficulties properly accorded less weight in mitigation than would otherwise be appropriate where there is no expert testimony clearly establishing a nexus between personal difficulties and failure to comply with professional obligations].)

Pretrial Stipulation: Respondent is entitled to mitigating credit for entering into this stipulation as to facts, conclusions of law, and disposition, thereby obviating the need for trial, saving State Bar resources, and evidencing recognition of wrongdoing. (*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 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 1.7(a) requires that where “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.” The most severe sanction applicable to Respondent’s misconduct is found under Standard 2.11, which provides that disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member’s practice of law.

In the Nunez matter, Respondent’s failure to disclose his compensation directly relates to the practice of law and was material. The disclosure of compensation requirement in bankruptcy cases allows oversight of fee arrangements between debtors and their counsel. “Section 329(a) seeks to prevent overreaching by debtor’s attorneys and serves to counteract the temptation of a failing debtor to deal too liberally with his property in employing counsel to protect him in view of financial reverses and probable failure.” (*In re Perrine* (Bankr. C.D. Cal. 2007) 369 B.R. 571, 579-580 [internal quotations omitted].) The disclosure rules are literally applied, and “[n]egligent or inadvertent omission ‘do not vitiate the failure to disclose.’” (*In re Park Helena-Corp.* (9th Circuit 1995) 63 F.3d 877, 881.) When an attorney fails to satisfy the requirements of the Bankruptcy Code or the Rules of Procedures (here, 11 U.S.C. § 329(a); U.S.C.S. Bankruptcy Rule 2016(b)), a bankruptcy court has broad discretion and the inherent authority to deny any and all compensation to the attorney. (See *In re Kisseberth* (6th Circuit 2001) 273 F. 3d 714, 721.) Indeed, the “failure to comply with the disclosure rules is a sanctionable violation...” (See *In re Park Helena-Corp.*, *supra*, at p. 880.)

Also applicable is Standard 1.8(b), which provides that if a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct: (1) actual suspension was ordered in any one of the prior disciplinary matters; (2) the prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or (3) the prior disciplinary matters coupled with the current record demonstrate the member’s unwillingness or inability to conform to ethical responsibilities.

Here, actual suspension was ordered in one of Respondent's priors, but the prior matters coupled with the current record do not demonstrate a pattern of misconduct given that 20 years passed between the prior matters and the present misconduct. The first imposition of discipline against Respondent involved a 45-day actual suspension for serious misconduct, which is particularly aggravating because it involved similar misconduct to the present matters of failing to perform legal services competently leading to the dismissal of two clients' actions, failing to communicate, and failing to cooperate in State Bar investigations. (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1149-1150 [similar misconduct, not rising to the level of a pattern of misconduct, properly considered as an aggravating factor].) The weight of this prior discipline is not discounted by the fact it was imposed over 20 years ago. (*In the Matter of Tenner* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688, 693, fn. 3 [weight of prior discipline not diminished by its remoteness in time because prior was serious in nature].)

However, a deviation from Standard 1.8(b) is nonetheless warranted. Respondent's misconduct in his second discipline matter in failing to submit a quarterly report and proof of joining the Law Practice Management Section of the State Bar in October 1994 was mitigated by Respondent's extreme emotional difficulties related to a family crisis at the time of his misconduct. Additionally, the misconduct occurred within two months of the effective date of his discipline in his first discipline matter in August 1994. (*In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, 531 [two prior discipline cases treated as a single matter for discipline purposes as both cases occurred during the same four-month period when Respondent's law practice disintegrated and he closed his office].) Therefore, because of the proximity in time between Respondent's two prior records of discipline, and the family crisis that was occurring during the misconduct in both priors, they may be considered as one prior record of discipline in determining the appropriate level of discipline in the present matter. (*Ibid.*; see also *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.) As such, it would be more appropriate to apply Standard 1.8(a), which provides that if a member has a single prior record of discipline the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.

A 90-day actual suspension, and until payment of restitution, is progressive discipline that would serve the primary purposes of discipline and is consistent with Supreme Court case law involving failures to perform and misrepresentation by attorneys, including a case where former Standard 1.7(b) was not applied despite the lack of compelling mitigation. (*Conroy v. State Bar* (1991) 53 Cal.3d 495.) In *Conroy*, the Supreme Court determined that the attorney acted in reckless disregard of his obligation to competently perform legal services by prolonged inaction, failed to keep a client informed of the status of his case, committed acts of moral turpitude by making affirmative misrepresentations to the client, and failed to cooperate with the client's successor counsel. (*Id.* at pp. 505, 507-508.) There was no evidence of mitigation and Conroy's misconduct was aggravated by his two prior records of discipline, which consisted of a private reproof and a 60-day actual suspension, and his failure to cooperate in the underlying disciplinary proceeding, where he defaulted. (*Id.* at p. 503.) The court noted that Respondent had also failed to cooperate in his previous disciplinary proceeding, where he also defaulted, and that his refusal to participate showed that he failed to appreciate the seriousness of the charges or to comprehend the importance of participating in the disciplinary proceedings. (*Id.* at p. 507.) Despite the fact that Conroy had two prior records of discipline, the court declined to apply former Standard 1.7(b) and instead applied former Standard 1.7(a) because the court felt that less weight should be given to Conroy's second discipline, which was imposed for failing to take the Professional Responsibility Examination that had been ordered as a condition of his first discipline. (*Id.* at pp. 506-507.) The court ordered Conroy be suspended from the practice of law for a period of five years, stayed, placed on probation for five years, and actually suspended for a period of one year. (*Id.* at p. 508.)

Respondent's misconduct is similar to the misconduct in *Conroy* in that Respondent also failed to perform services with competence, failed to communicate with his client, and committed an act of moral turpitude. Although Respondent also committed additional acts of misconduct, his act of moral turpitude, which is the most serious misconduct involved in both *Conroy* and the present matter, was less severe than Conroy's. Conroy made multiple affirmative misrepresentations to his client, whereas Respondent's act of moral turpitude resulted from a single incident involving gross negligence, as opposed to intentional dishonesty. Additionally, while Respondent and Conroy both failed to cooperate, Conroy's failure was more serious in that Conroy defaulted in both the present proceeding and his prior disciplinary proceeding, and he displayed a "contemptuous attitude toward [the disciplinary] proceedings..." (*Id.* at p. 508.) Here, Respondent has not defaulted and has, instead, entered into this stipulation, obviating the need for trial and evidencing his recognition of wrongdoing. Additionally, *Conroy* involved no mitigation, whereas there are some mitigating factors in the present matter. Based on all of the above, a level of discipline lower than that imposed in *Conroy* is warranted in the present matter.

In light of the foregoing, discipline consisting of two years of stayed suspension, two years of probation, and 90 days of actual suspension, and until payment of restitution, is appropriate to protect the public, the courts, and the legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession.

DISMISSALS.

The parties respectfully request the Court dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
15-O-12690	Two	Business and Professions Code section 6068(d)
15-O-13748	Eight	Business and Professions Code section 6068(d)
15-O-13748	Nine	Business and Professions Code section 6106

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 27, 2016, the prosecution costs in this matter are \$7,609. 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.

EXCLUSION FROM MCLE CREDIT

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of Ethics School ordered as a condition of discipline. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: EDWARD WILLIAM PACHECO	Case number(s): 15-O-12690; 15-O-13748
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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.

April 28, 2016  Edward William Pacheco
Date Respondent's Signature Print Name

5/31/16  Shane C. Morrison
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: EDWARD WILLIAM PACHECO	Case Number(s): 15-O-12690; 15-O-13748
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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.

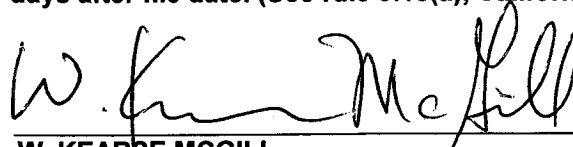
On page 5 of the stipulation, in paragraph D(3)(a)(ii), at the end of the sentence after the word "stipulation" and before the period, the following text is inserted: "and until respondent furnishes proof satisfactory of the restitution to the State Bar's Office of Probation in Los Angeles."

On page 10 of the stipulation, in paragraph number 15, at the end of the sentence, the independent clause, which begins: "Respondent committed an act," is MODIFIED to read as follows: "Respondent committed an act involving moral turpitude in willful violation of Business and Professions Code section 6106."

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.)**

June 17, 2016

Date



W. KEARSE MCGILL
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 June 22, 2016, 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:

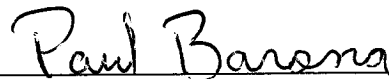
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**EDWARD WILLIAM PACHECO
PACHECO & ASSOCIATES
5410 E BEVERLY BLVD #100
LOS ANGELES, CA 90022**

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

SHANE C. MORRISON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 22, 2016.



Paul Barona
Case Administrator
State Bar Court