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State Bar Court of California Hearing Department San Francisco DISBARMENT		
Counsel For The State Bar Susan I. Kagan Senior Trial Counsel 180 Howard St. San Francisco, CA 94105 (415) 538-2037 Bar # 214209	Case Number(s): 15-O-13439	For Court use only PUBLIC MATTER FILED  MAY 16 2016 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Paul J. Virgo 9909 Topanga Blvd # 282 Chatsworth, CA 91311 Bar # 67900	Submitted to: Assigned Judge	
In the Matter of: KENNETH GERALD JONES Bar # 196868 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <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.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **November 24, 1998**.
- (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 **(11)** 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
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If respondent has two or more incidents of prior discipline, use space provided below:
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith. **See Attachment at p. 8.**
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment. **See Attachment at p. 8.**
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.
- (7) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

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- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See Attachment at 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.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct. See Attachment at p. 8.
- (13) **Restitution:** Respondent failed to make restitution. See Attachment at p. 8.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

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

Additional mitigating circumstances:

Profiling Stipulation. See Attachment at 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 **Bowles & Verna LLP** in the amount of \$ **555,454.90** plus 10 percent interest per year from **May 26, 2015**. If the Client Security Fund has reimbursed **Bowles & Verna LLP** 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 **30** days from the effective date of the Supreme Court order in this case.
- (3) **Other:**

America, requesting a routing number, so he could transfer money from PayPal to the business account. On the same date, Bank of America emailed a routing number to respondent.

6. On March 5, 2010, respondent began transferring money from his PayPal account to his newly created Legal Reprographics business account at Bank of America.
7. At all relevant times herein, Sheila Pierce ("Pierce") worked in the accounting department at BV. Pierce would periodically ask respondent for information about the Legal Reprographics invoices. Respondent would make misrepresentations to Pierce about the work performed by Legal Reprographics. As one example, in January 2011, Pierce asked respondent whether Legal Reprographics needed a 1099, or if it was a corporation. On January 28, 2011, respondent addressed an email to "Cheri" at legalprobilling@yahoo.com, a person who did not exist, to inquire whether the company needed a 1099, or if it was a corporation. Respondent copied Pierce on the email. On the same date, respondent sent an email response from "Cheri" to his email at BV, with a copy to Pierce, advising that it was a Delaware Corporation.
8. Between February 16, 2010, and April 2, 2015, respondent created numerous separate Legal Reprographics invoices to BV which he transmitted via his PayPal account and then caused to be paid through his BV American Express card. In some cases, after receiving the payments, respondent instructed BV's accounting department to remove the charges from the client's internal account. In other instances, respondent instructed BV's accounting department to transfer the costs to separate "costs only" invoices, claiming that the client required this to be done and that he would send those invoices separately; respondent did not send the invoices. In some instances, American Express charges for the Legal Reprographics invoices were billed to clients and at least one client paid the improper invoices, which when discovered, required that BV reimburse the client.
9. From February 16, 2000 through April 2, 2015, respondent misappropriated \$605,454.90 from BV through the fraudulent invoicing scheme.
10. During his tenure as partner, respondent also diverted client payments to himself for services provided by BV. Respondent instructed the accounting department to "write off" that amount to the client's bill without turning the funds over to BV, or informing BV that he was personally receiving the money. Respondent collected fees directly from BV clients without BV's knowledge or consent.
11. On May 26, 2015, BV discovered respondent's fraudulent scheme and the parties severed their relationship. When caught, respondent admitted to the actions and stated that he had a "spending problem" and had been living beyond his means and needed the additional income.
12. Respondent signed over a life insurance policy paid by BV, which has a cash value of approximately \$50,000. Respondent also voluntarily and spontaneously released his ownership interest in the firm and interest in various firm assets. Respondent still owes restitution to the firm.

CONCLUSIONS OF LAW:

13. By creating and submitting false invoices for \$605,454.90 in phony services to BV over a five-year period and by diverting client payments for services provided by the firm for the purpose of

defrauding the firm of those funds for his own use and benefit, respondent engaged in a scheme to defraud and committed acts involving moral turpitude, dishonesty and corruption in willful violation of section 6106 of the Business and Professions Code.

14. By intentionally misappropriating \$605,454.90 from phony invoices, respondent committed acts involving moral turpitude, dishonesty and corruption in willful violation of section 6106 of the Business and Professions Code.
15. By creating and submitting false invoices for \$605,454.90 in phony services to BV over a five-year period and by diverting client payments for services provided by the firm for the purpose of defrauding the firm of those funds for his own use and benefit, respondent breached the common law fiduciary duty of loyalty owed to the firm, in willful violation section 6068(a) of the Business and Professions Code.

AGGRAVATING CIRCUMSTANCES.

Pattern of Misconduct (Std. 1.5(c)): Respondent's multiple acts of misconduct over a five-year period, which include multiple misappropriations and misrepresentations, demonstrate a pattern of misconduct.

Dishonesty (Std. 1.5(d)): Respondent's misconduct in creating and perpetuating the scheme to defraud was surrounded by dishonesty.

Concealment (std. 1.5(f)): Respondent's misconduct in perpetuating the scheme to defraud was surrounded by concealment.

Harm (Std. 1.5(j)): Respondent's misconduct caused significant harm to the firm. Upon discovering respondent's misconduct, the firm informed its clients and repaid any clients that improperly paid bills based on respondent's fraudulent invoices. In addition, the firm "wrote off" more than \$250,000 in accounts receivable as a gesture of good will to maintain its existing clients.

Failure to Make Restitution (Std. 1.5(m)): To date, respondent still owes the firm \$555,454.90 from the funds misappropriated through the fraudulent invoices.

MITIGATING CIRCUMSTANCES.

Prefiling Stipulation: Respondent is entitled to mitigation for entering into a stipulation with the Office of Chief Trial Counsel prior to trial in the above referenced disciplinary matter, thereby saving State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and 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 high professional standards; and preservation of public confidence in the legal profession. (*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 discipline 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 committed three acts of 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 2.11, which applies to respondent's scheme to defraud and provides: "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."

Here, respondent engaged in a scheme to defraud his firm over a five-year period. Under the scheme, respondent was able to misappropriate more than \$605,000 from the firm, causing significant harm. The magnitude of the misconduct was great and directly related to the practice of law. In aggravation, respondent committed a pattern of misconduct that was surrounded by dishonesty and concealment. To date, respondent has failed to make restitution to the victim of his misconduct. Respondent is entitled to mitigation for entering into a pretrial stipulation. He is not entitled to mitigation for no prior discipline because the misconduct is not aberrational, and therefore, likely to reoccur. (See, e.g., *Kaplan v. State Bar* (1991) 52 Cal.3d 1067 [no mitigation credit for a lack of priors when misconduct not aberrational].)

In light of the serious and repetitive nature of respondent's misconduct, disbarment is warranted under the standards.

Case law is instructive. This matter is most similar to *Kaplan v. State Bar* (1991) 52 Cal.3d 1067. In *Kaplan*, the attorney, a partner in a law firm, misappropriated \$29,000 from the firm over a seven-month period by depositing checks made payable to the firm into his personal bank account. When caught, the attorney initially denied the misconduct, but later admitted it and misrepresented that the money was

used to pay for medical expenses for a family member. It was later determined that the money was to purchase gifts for the attorney's wife and "to maintain a standard of living beyond his means." (*Id.* at p. 1069.) The attorney made restitution in the form of an offset to his capital account.

The Supreme Court ordered disbarment based on violations of Business and Professions Code sections 6068(a), 6103 and 6106. In aggravation, the Court found multiple acts of misconduct. In mitigation, the Court noted that the attorney produced 16 character witnesses, most of whom were surprised by the misconduct and considered it "anomalous." (*Id.* at p. 1070.) The Court disagreed. The Court determined that the attorney's misconduct was not aberrational, but instead, "was part of a purposeful design to defraud his partners....Further, there is no indication that, absent the action of [the firm's] partners, Kaplan would have ceased his conduct at all." (*Id.* at pp. 1071-1072.) As such, the court afforded no mitigation for a lack of prior record of discipline in 12 years of practice. The Court also declined to afford any mitigation credit for extreme emotional difficulties since the attorney did not provide clear and convincing evidence that he no longer suffered from the difficulties.

In assessing the level of discipline, the Court noted: "Kaplan's behavior was grievously improper, and he continued the behavior for several months. While marital stresses and the imminent demise of loved ones are always personal tragedies, we fully expect that members of the bar will be able to cope with them without engaging in dishonest or fraudulent activities, especially on the scale that Kaplan engaged in such activities. In light of both the amount of money and the sustained period over which Kaplan misappropriated [the firm's] funds, we are unpersuaded that the State Bar's recommendation [of disbarment] was in error." (*Id.* at p. 1073.)

The same sentiment applies to respondent's misconduct. In fact, respondent's misconduct is more egregious than that in *Kaplan* since the scheme was perpetuated for longer and resulted in a much larger misappropriation. Accordingly, disbarment is appropriate.

COSTS OF DISCIPLINARY PROCEEDINGS.


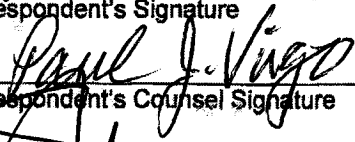

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of May 5, 2016, the prosecution costs in this matter are \$3,066. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: KENNETH GERALD JONES	Case number(s): 15-O-13439
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>5-13-16</u> Date	 Respondent's Signature	<u>Kenneth G. Jones</u> Print Name
<u>5/13/2016</u> Date	 Respondent's Counsel Signature	<u>Paul J. Virgo</u> Print Name
<u>5/13/16</u> Date	 Deputy Trial Counsel's Signature	<u>Susan I. Kagan</u> Print Name

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In the Matter of: KENNETH GERALD JONES	Case Number(s): 15-O-13439
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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:

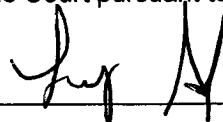
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

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

Date

May 16, 2016



Judge of the State Bar Court

LUCY ARMENDARIZ

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 May 16, 2016, 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:

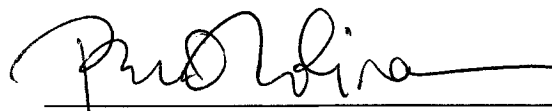
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

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

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

SUSAN I. KAGAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 16, 2016.



Bernadette Molina
Case Administrator
State Bar Court