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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>San Francisco</b> <b>ACTUAL SUSPENSION</b>		
<b>Counsel For The State Bar</b>  <b>Robert A. Henderson</b> <b>Supervising Attorney</b> <b>180 Howard St.</b> <b>San Francisco, CA 94105</b> <b>(415) 538-2385</b>  <b>Bar # 173205</b>	<b>Case Number(s):</b> <b>15-O-14148-PEM</b>	<b>For Court use only</b>  <b>PUBLIC MATTER</b>  <b>FILED</b> <i>WJ</i>  <b>JUN 19 2018</b>  <b>STATE BAR COURT CLERK'S OFFICE</b> <b>SAN FRANCISCO</b>
<b>Counsel For Respondent</b>  <b>Jerome Fishkin</b> <b>Fishkin &amp; Slatter, LLP</b> <b>1575 Treat Blvd., Suite 215</b> <b>Walnut Creek, CA 94598</b> <b>(925) 944-5600</b>  <b>Bar # 47798</b>	<b>Submitted to: Settlement Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND</b> <b>DISPOSITION AND ORDER APPROVING</b>  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> <b>PREVIOUS STIPULATION REJECTED</b>	
<b>In the Matter of:</b> <b>PAUL DOUGLAS VAN DER WALDE</b>  <b>Bar # 169332</b>  <b>A Member of the State Bar of California</b> <b>(Respondent)</b>		

**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 **December 14, 1993**.
- (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 14 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."

(Effective July 1, 2015)



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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: (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
  - (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.
- (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.
- (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.
- (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 page 10.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (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. **See page 11.**
- (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:**

**No prior record of discipline. See page 11.**

**Pre-trial stipulation. See page 11.**

**D. Discipline:**

(1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of **one year**.
- 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 **one year**, 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 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:**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      PAUL DOUGLAS VAN DER WALDE  
CASE NUMBER:                            15-O-14148-PEM

**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-14148 (Complainant: James Exum)

**FACTS:**

1. Respondent, throughout his career, has specialized in personal injury cases, representing injured plaintiffs. Prior to the events in this matter, respondent had never prepared a will.
2. On June 20, 2002, Mary Exum ("Exum") was severely beaten by a patient in the psychiatric hospital where Exum worked. Exum sustained injuries to her knees, shoulders, neck and hands. She also suffered a concussion.
3. Exum was unable to work after the June 20, 2002 hospital incident. Following the assault, and due to the injuries sustained, Exum moved into her mother's house. Exum's mother let her stay in the house rent free and assisted with Exum's needs. Exum recovered slowly. Exum was unable to obtain, through the workers' compensation system, the necessary referrals for physical therapy and an electric wheelchair.
4. On October 12, 2006, Exum hired respondent to represent her in a civil claim arising out of the hospital incident. There were statute of limitation issues. There were also issues involving workers' compensation exclusivity and occupational assumption of the risk. Respondent took the case, notwithstanding the problematic posture of the matter, to see if he could somehow help Exum. Respondent, on Exum's behalf, filed a lawsuit against a number of defendants.
5. Between October 2006 and March 2013, respondent represented Exum in a personal injury case, a contentious Estate Matter involving her deceased mother and sister, and a related unlawful detainer matter also involving Exum's sister. Over the course of his representation of Exum, respondent and Exum became close friends.
6. On May 2, 2007, Exum's mother died. The only heirs of Exum's mother, were Exum and Exum's sister. After Exum's mother died, Exum's sister told Exum not to expect any help from her. Exum and her sister were estranged from that date, until the date of Exum's death. After the death of Exum's mother, through at least March 20, 2013, respondent provided pro bono legal advice and counsel to Exum in the estate matter and other associated legal matters including an unlawful detainer.

7. After the death of Exum's mother, Exum's heirs at law would have been her sister, and then the children of her sister.

8. On February 22, 2008, Exum's claims against some of the defendants in the personal injury matter were fully resolved for \$75,000. Respondent was legally entitled to 40 percent, but discounted his fee to one third of the recovery.

9. On May 22, 2008, a release was signed for a waiver of costs/fees, for the remaining defendants in the personal injury matter and the matter was completed.

10. On May 27, 2008, Exum's sister, as trustee of Exum's mother's trust, served an eviction notice on Exum. At that time, Exum was unable to walk on her own and was homebound. Exum did not know what to do, given her inability to walk, lack of financial resources, and grief after the death of her mother and loss of her mother's support. Respondent agreed to represent Exum in the eviction proceeding pro bono. Among other things, respondent was able to reach an agreement, through Exum's sister's attorney, that Exum could remain in her mother's house until she found another place to live.

11. Neither Exum's sister, nor Exum's nephew, offered Exum any financial help or other assistance in finding a place to live. Respondent stepped in to assist Exum in finding a new home. Respondent was able to locate an apartment for Exum. Respondent closed his office for two days and helped Exum pack, move and unpack. Respondent bought an electric wheelchair for Exum to use, so she could be more independent and not be homebound. At the time, respondent and Exum expected that the wheelchair would be covered by Exum's insurance.

12. During the course of the respondent's representation of Exum, she also became friends with respondent's wife and his children. Respondent and his wife frequently visited Exum at her apartment and she visited respondent's family at their home.

13. On March 20, 2009, respondent and Exum's sister's attorney reached a stipulation regarding the division of Exum's mother's Estate between Exum and her sister.

14. In July 2009, Exum was admitted to the hospital for a severe, potentially life-threatening medical condition. Among the papers given to Exum at the hospital, was a "Living Will" packet, which could be filled out to create a Will. Exum recovered from the July 2009 illness, and left the hospital to resume her life. After she left the hospital, Exum's physical condition made it difficult for her to write, so she asked respondent to fill out the answers to the questions in the Living Will packet in accord with her directions. As relevant to this proceeding, the Will directed that 70 percent of Exum's Estate be given to respondent. The Will also expressly and explicitly disinherited Exum's sister.

15. Respondent, at the direction of Exum, filled out the form Will, including handwriting the narrative attachment expressly disinheriting Exum's sister, leaving 10 percent of Exum's Estate to her nephew James Exum ("Nephew") and 10 percent to each of her nephew's two children. The Will left the remaining 70 percent of Exum's Estate to respondent. Respondent had a subjective belief, that was objectively in error, that he could fill out the form Will for Exum, without violating the Probate Code and/or the Business and Professions Code. However, by filling out the Will for Exum, respondent violated the Probate Code and created an invalid testamentary gift. In preparing the Will, respondent acted in Exum's interest and did not engage in any undue influence, fraud or duress.

16. The 70 percent bequest to respondent contained in the July 2009 Will, violated Probate Code section 21350, which invalidated any donative transfer to the person who prepared the instrument.

17. In January 2011, respondent assisted Exum in purchasing a mobile home. Respondent also assisted Exum in obtaining a second mortgage for the mobile home, for which he was a co-signer. From February 2011, through the date of Exum's death, respondent paid the second mortgage on the mobile home, in the amount of \$871.88 per month.

18. From July 29, 2009 to February 14, 2014, respondent made the following personal loans to Exum, while Exum was his client:

- a. \$4,070.00 for cleaning, gardener, and carpets, from July 2009 through December 11, 2012;
  - b. \$26.50 Vital Check Network for Birth Certificate – July 29, 2009;
  - c. \$39.85 Vital Check Network for Parents Death Certificate – July 29, 2009;
  - d. \$413.36 Santa Cruz Patients Collective – Receipt date illegible
  - e. \$895.70 Home Depot – May 28, 2010 for home supplies for Exum
  - f. \$2,500 Personal Loan to Exum – November 10, 2011 for household bills Exum needed to pay;
  - g. \$97.83 Horsnyder Medical – January 4, 2012;
  - h. \$97.17 Walgreens – March 27, 2012
  - i. \$1,082.46 Hornsnyder Medical – April 19, 2012 for a power wheel chair;
  - j. \$1,000 Personal Loan to Exum – April 19, 2012;
  - k. \$1,900 Couch Potato – November 25, 2012, for furniture;
  - l. \$1,982.46 Couch Potato – January 5, 2013, for furniture;
  - m. \$500 Personal Loan to Exum – January 12, 2013; and
  - n. \$48,432.35, made to the holder of Exum's second mortgage from February 8, 2011 through January 10, 2014.
- 
- \$63,037.38 [Total]

19. Respondent did not disclose in writing to Exum, the terms of each loan; nor did he advise her in writing to seek the advice of an independent lawyer; nor did Exum consent in writing to the terms of the loans. These loans were made interest free to Exum and the terms were that Exum was to pay respondent back, if and when she could.

20. On January 10, 2014, Exum repaid \$18,000 of the \$63,037.38 in loans made by respondent.

21. On February 14, 2014, Exum died during emergency surgery. Respondent was at Exum's bedside when she died. The July 2009 Will remained in effect. Although Probate Code section 21350 was repealed effective January 1, 2011, the instrument prepared was still governed by the provision. (See *Jenkins v. Teagarden* (2014) 230 Cal.App. 4<sup>th</sup> 1128, 1131.)

22. Neither Exum's sister, nor Exum's nephew, communicated with Exum from 2009 through the day she died on February 14, 2014. Since Exum had a Will, her sister, nephew and nephew's children would be the only heirs under the law of intestate succession.

23. On April 4, 2014, Exum's nephew signed a Declaration Under California Probate Code Section 13100, which identified the successors of Exum and their respective interest in Exum's Estate and requested the transfer of the assets of Exum's Estate to respondent as the Executor of the Estate.

24. On July 17, 2014, Exum's nephew signed a Declaration Under California Probate Code Section 13100, which directed respondent to transfer the assets of the Estate as listed in the Will.

25. On June 11, 2016, Exum's nephew signed a Release on behalf of himself and his children, who were also heirs of Exum, releasing respondent from all claims known and unknown relating to the Estate of Exum. The release did not apply to the State Bar complaint.

26. Pursuant to the 2009 Will, and with the agreement of Exum's nephew on behalf of the nephew and his two children, respondent received \$185,620.98, which was less than 70 percent of the estate. Respondent's accepting less than 70 percent allowed the nephew and each child of the nephew to receive \$30,000 each from the estate. Respondent also claimed reimbursement for the above loans to Exum, which were repaid by the Estate prior to the distribution. Respondent was represented by counsel in the Administration of the Estate. The nephew and sister of Exum did not contest the Administration of the Estate.

27. On August 4, 2015, Exum's nephew filed a complaint with the State Bar regarding the testamentary provision giving respondent 70 percent of the Estate.

28. Respondent never attempted to conceal the fact that he filled out the Will on behalf of his client Exum.

29. On February 27, 2018, as a result of the complaint filed by Exum's nephew and the operation of Probate Code Section 21350, which invalidated the 70 percent bequest to respondent, respondent interplead \$216,333.09 in *In re Paul Van der Walde v. Exum*, Santa Cruz County Superior Court case no 18CV00616. The amount deposited was the full amount received by respondent, the reserve for Exum's Estate, plus interest.

#### CONCLUSIONS OF LAW:

30. By filling out the Will on behalf of Exum, in which respondent was to inherit 70 percent of the Estate, and by taking under the Will, when respondent should have known that the bequest was improper, respondent violated Probate Code section 21350, which invalidated any donative transfer to the person who prepared the instrument and thereby violated Business and Professions Code, section 6103.6.

31. By loaning money to Exum and by directly paying personal expenses for Exum when she was his client, which payments constituted loans to the client, without obtaining the client's promise in writing to repay such loans, respondent willfully violated Rules of Professional Conduct, rule 4-210(A).

32. By filling out the Will on behalf of Exum, in which respondent received 70 percent of the Estate, which by law failed under Probate Code section 21350, resulting in the donative transfer going to someone other than whom Exum wanted the bequest to go, respondent repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

#### AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent in this matter committed three separate acts of misconduct, representing multiple acts of wrongdoing.



## MITIGATING CIRCUMSTANCES.

**Extraordinary Good Character (Std. 1.6(f)):** Respondent has provided witness statements and character witness statements from seven attorneys as well as sixteen members of the community at large, one of which was a treating physician of Exum. The witnesses attest to respondent's good character, altruism, and efforts on behalf of Exum. Many of the witnesses observed respondent's interaction with Exum over lengthy period of time. Many of the witnesses describe respondent's relationship with Exum as a genuine friendship and remarked on his care of and financial assistance to Exum.

**Pretrial Stipulation:** By entering into this stipulation, respondent has acknowledged his misconduct and is entitled to mitigation for recognition of wrongdoing, specifically, for interpleading \$216,333.09 in *In re Paul Van der Walde v. Exum*, Santa Cruz County Superior Court, case no 18CV00616, and saving the State Bar significant resources and time. Respondent has been candid in his representations to the State Bar in all matters and has been able to document each instance he loaned money to Exum. (*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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

**No Prior Record of Discipline:** Respondent practiced law for 16 years, prior to the misconduct in this matter. He practiced law for an additional four years after the last date of misconduct. Respondent is entitled to full credit for the absence of prior misconduct, which is then weighed with the other mitigation in reaching a final level of discipline. (*Matter of Bleecker* (1990) 1 Cal State Bar Court Rptr 139, 158; *In re Mudge* (1982) 33 Cal 3<sup>rd</sup> 152; *Kaplan v State Bar* (1991) 52 Cal 3<sup>rd</sup> 1067.)

## AUTHORITIES SUPPORTING DISCIPLINE.

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

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

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of

misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, respondent 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 2.18, based on respondent's violation of Business and Professions Code, section 6103.6, which states:

Disbarment or actual suspension is the presumed sanction for any violation of a provision of Article 6 of the Business and Professions Code, not otherwise specified in these Standards.

Respondent's conduct in violating Business and Professions Code, section 6103.6 is serious as it involved a client's estate and a sizable amount of money. However, the client did not suffer any harm and respondent has now interplead the funds. The single aggravating factor of multiple acts, is clearly outweighed by the mitigation evidence of good character, no prior discipline and pretrial stipulation. Mitigation in this matter clearly predominates. Therefore an actual suspension rather than disbarment is appropriate under the Standard.

Case law is instructive. In *Fleming v State Bar* (1952) 38 Cal 2nd 341, a pre-standards case, the attorney's partner drafted a Will giving Fleming all of the client's property. Several months later the client executed a second Will, which likewise provided a substantial bequest for Fleming. Several years later Fleming became the guardian of the client. During Fleming's guardianship of the client, he advanced her substantial sums from his personal funds. The Supreme Court stated:

We have concluded that the weight of the evidence is against the inferences that petitioner was guilty of willful wrongdoing designed to enrich himself and his wife at the expense of Mrs. Landon. . . petitioner's dealings with Mrs. Landon were had at her urgent request and because of the immediate necessity of providing funds for her care, and for the purpose of protecting her from the apparent unkindness and machinations of her daughter. . . . Petitioner's conduct was unquestionably unwise and improper; it admits of suspicion as to his motives. An experienced member of The State Bar, having regard for the duties and responsibilities of his profession and the proprieties of professional relationship with his clients, should not, without further safeguards for both his client and himself, have permitted his personal interests to become so enmeshed with those of a client of the age and state of health of Mrs. Landon. We are of the view, however, that petitioner has met the burden of showing that he was not guilty of moral turpitude. The net result, the only ultimate result, of petitioner's acts, has been to benefit, not to prejudice, Mrs. Landon. (*Id.* at 347-349.)

The Supreme Court disregarded the State Bar's recommendation of a two-year suspension and imposed a public reproof. The misconduct in the present case is more serious than that in *Fleming*, and therefore, requires a higher level of discipline. However, given the compelling mitigation in this case, which



clearly predominates, a 90-day actual suspension with one-year stayed suspension and one-year of probation is the appropriate resolution and will safeguard the respect to the courts and the legal profession.

#### **DISMISSALS.**

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

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
15-O-14148	Two	Business and Professions Code, section 6103.6 [Duplicative/Alternative to Count One]
15-O-14148	Three	Business and Professions Code, section 6106 [Duplicative/Alternative to Count One]
15-O-14148	Four	Business and Professions Code, section 6106 [Duplicative/Alternative to Count One]
15-O-14148	Five	Rules of Professional Conduct, rule 4-440 [Duplicative/Alternative to Count One]
15-O-14148	Six	Business and Professions Code, section 6068(a) [Duplicative/Alternative to Count One]
15-O-14148	Seven	Rules of Professional Conduct, rule 3-300 [Duplicative/Alternative to Count Eight]

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of June 1, 2018, the discipline costs in this matter are \$4,000. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT**

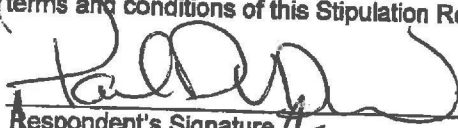


Respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course(s) to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: <b>PAUL DOUGLAS VAN DER WALDE</b>	Case number(s): <b>15-O-14148-PEM</b>
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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>6-7-18</u> Date	 Respondent's Signature	<u>Paul D. Van der Walde</u> Print Name
<u>6-12-18</u> Date	 Respondent's Counsel Signature	<u>Jerome Fishkin</u> Print Name
<u>6/15/2018</u> Date	 Deputy Trial Counsel's Signature	<u>Robert A. Henderson</u> Print Name

(Do not write above this line.)

In the Matter of:  
PAUL DOUGLAS VAN DER WALDE

Case Number(s):  
15-O-14148-PEM

### 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.

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 14, 2015

Date

  
LUCY ARMENDARIZ  
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 Court Specialist 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 June 19, 2018, 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 San Francisco, California, addressed as follows:

PAUL DOUGLAS VAN DER WALDE  
CAPUTO & VAN DER WALDE LLP  
51 E CAMPBELL AVE STE 120  
CAMPBELL, CA 95008

JEROME FISHKIN  
FISHKIN & SLATTER LLP  
1575 TREAT BLVD STE 215  
WALNUT CREEK, CA 94598

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

Robert A. Henderson, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 19, 2018.



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Vincent Au  
Court Specialist  
State Bar Court