

(Do not write above this line.)

State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		
<p>Counsel For The State Bar</p> <p>Anand Kumar Senior Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017 (213) 765-1714</p> <p>Bar # 261592</p>	<p>Case Number(s): 15-O-14756- LMA 15-O-15517</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 1.2em;">PUBLIC MATTER</p> <p style="text-align: center; font-size: 1.5em;">FILED</p> <p style="text-align: center; font-size: 1.2em;">NOV 18 2016 </p> <p style="text-align: center; font-size: 0.8em;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Edward O. Lear Century Law Group LLP 5200 W Century Blvd #345 Los Angeles, CA 90045 (310) 642-6900</p> <p>Bar # 132699</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: EMAHN COUNTS</p> <p>Bar # 231368</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 3, 2004**.
- (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."



(Do not write above this line.)

- (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):
- Costs are added to membership fee for calendar year following effective date of discipline.
 - 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 or a separate attachment entitled "Prior Discipline."
- (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..

(Do not write above this line.)

- (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 stipulation, at 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. **See stipulation, at page 10.**
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice. **See stipulation, at page 10.**
- (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 \$ 2,560 on **April 16, 2014** in restitution to **David Melamed** without the threat or force of disciplinary, civil or criminal proceedings. **See stipulation, at page 11.**
- (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.

(Do not write above this line.)

- (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 stipulation, at pages 10-11.**
- (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

Mistaken Belief and Pretrial Stipulation, see stipulation, at page 11.

D. Discipline:

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

The above-referenced suspension is stayed.

- (2) **Probation:**
- Respondent is placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) 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.

- (4) 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.

- (5) 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.
- (6) 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.

- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.

No Ethics School recommended. Reason: .

- (8) 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.

- (9) 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 within one year. **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) **Other Conditions:**

(Do not write above this line.)

In the Matter of: EMAHN COUNTS	Case Number(s): 15-O-14756, 15-O-15517
--	--

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

- 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:
 - a. 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";

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: EMAHN COUNTS

CASE NUMBERS: 15-O-14756, 15-O-15517

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-14756 (Complainant: David Melamed)

FACTS:

1. On July 1, 2013, David Melamed (“Melamed”) was sued in a commercial real estate landlord-tenant lawsuit for breaching the lease, in the matter entitled *Apple a Day v. West L.A. Medical & Skincare et, al.*, Los Angeles County Superior Court case number BC513678 (the “lawsuit”).
2. On July 8, 2013, Melamed entered into a retainer agreement (“retainer agreement”) to hire Respondent to represent Melamed in the lawsuit.
3. On July 30, 2013, Melamed gave Respondent access to his MasterCard credit card information and authorized Respondent to charge the credit card for Respondent’s court costs and for any unpaid legal fees.
4. In February 2014, the attorney-client relationship between Melamed and Respondent broke down due to a disagreement over Respondent’s legal fees incurred in Melamed’s case during January 2014, and Respondent’s office charging his credit card for the unpaid legal fees.
5. On February 7, 2014, Melamed sent Respondent an email terminating Respondent’s employment. Respondent received the termination email.
6. On February 10, 2014, at Respondent’s direction, one of his staff member emailed Melamed stating that the firm was in receipt of Melamed’s request to terminate the retainer agreement and asking Melamed to execute a substitution of attorney form. The staff’s email further stated that if Melamed did not sign and return the substitution form by February 14, 2014, a motion to withdraw would be filed with the court and Melamed would be responsible for the costs. Respondent received a copy of the email.
7. On February 12, 2014, Melamed sent an email to Respondent and his staff stating that Respondent and his staff were no longer authorized to charge his credit card for legal services.
8. Melamed failed to return the executed substitution form by February 14, 2014.

9. On February 19, 2014, as a result of failing to supervise his staff in the course of filing a motion to withdraw, Respondent's staff fax-filed an ex parte motion to withdraw from representation with the Court, which included an attached credit card authorization form with Melamed's simulated signature and which resulted in an unauthorized filing fee of \$72 being charged to Melamed's MasterCard. At no time did Melamed sign the authorization form attached to the pleading, nor authorize Respondent or his staff to sign his name. Instead, the credit card authorization form was signed by Respondent's staff without Melamed or Respondent's knowledge. At the time he filed the pleading, Respondent was unaware that the authorization form contained Melamed's simulated signature.

10. On March 5, 2014, Respondent sent Melamed an invoice for the legal services Respondent performed in Melamed's case during February 2014. Melamed failed to timely pay Respondent's outstanding February 2014 legal fees in the amount of \$2,560.

11. On March 14, 2014, as a result of failing to properly supervise his office staff and ensure that Melamed was appropriately billed, Respondent's staff made an unauthorized charge and collected \$2,560 from Melamed's credit card for Respondent's outstanding legal fees against Melamed's written instructions.

12. On March 23, 2014, Melamed disputed the \$2,560 charge to his credit card, and in April 2014, prior to any involvement by the State Bar, Respondent agreed to credit the \$2,560 back to Melamed's credit card. On April 16, 2014, Respondent refunded \$2,560 to Melamed.

CONCLUSION OF LAW:

13. By failing to supervise his staff in the filing of the February 19, 2014 motion to withdraw, and the unauthorized March 14, 2014 credit card withdrawal, Respondent repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

Case No. 15-O-15517 (Complainant: Patricia Lopez Pereira)

FACTS:

14. On March 10, 2015, general contractors Fernando Pereira ("Pereira") and his wife, Patricia Lopez Pereira ("Lopez") recorded a mechanic's lien ("lien") against real property owners for work they performed for the real property owners.

15. On June 9, 2015, Pereira and Lopez filed a 90-day extension of the lien, which they erroneously believed extended the renewal period for the lien until September 10, 2015.

16. On September 2, 2015, Pereira and Lopez hired Respondent to perform legal services, including performing legal research to determine the validity of their lien by no later than September 9, 2015, and inform them of the same, in order for them to renew the lien a second time by September 10, 2015, if necessary. The retainer agreement called for Pereira and Lopez to pay Respondent \$3,000, including \$1,500, which was to be charged to their credit card. At all relevant times, Respondent knew that time was of the essence for the clients and that the clients were expecting to find out the status of the lien and possibility of its renewal by September 9, 2015.

17. Between September 4 and 8, 2015, Lopez paid Respondent a total of \$1,500.

18. On September 8, 2015, Respondent assigned a research attorney to perform legal research to determine the validity of the lien, who performed the research, which revealed that the lien could not be renewed or extended, because it was defective on its face, a significant development in the clients' matter.

19. On the morning of September 9, 2015, the research attorney informed Respondent the results of her research. However, Respondent failed to timely inform Pereira and Lopez of the significant development due to his mistaken belief that the deficiency in the lien rendered the communication of the significant development to the clients by September 9, 2015 unnecessary.

20. Instead, on September 9, 2015, at his direction, Respondent's staff emailed Lopez attempting to schedule a phone conference with the clients, and he failed to actually inform his clients of the significant development until the phone conference took place September 21, 2015.

CONCLUSION OF LAW:

21. By failing to inform his clients regarding the status of their lien and its eligibility for renewal by September 9, 2015, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent committed separate acts of misconduct in two different client matters, which constitutes an aggravating circumstance.

MITIGATING CIRCUMSTANCES.

No Prior Discipline (Std. 1.6(a)): Respondent had been practicing law for 9 years at the time of the misconduct without prior discipline, and his misconduct appears to be isolated and therefore unlikely to recur, which is entitled to some mitigation. (*In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 116.)

Lack of Harm to Client (Std. 1.6(c)): There is no evidence of any harm to Respondent's clients, because Respondent timely returned Melamed's unauthorized credit card charges within a month, and the delay in informing Pereira of her significant development was ultimately inconsequential to the renewal of the mechanic's lien, as the lien was deficient and could not be renewed.

Extraordinary Good Character (Std. 1.6(f)): Respondent has submitted nine character declarations from a widespread sample of the legal and general communities, including four attorneys, two long-term friends, a client, and two family members, all of whom are aware of the full extent of Respondent's misconduct and attesting to an extraordinary demonstration of his good character. Respondent also performs volunteer activities, including currently serving as a class ambassador for the Loyola Marymount University African-American Alumni Association, which donates money and obtains financial contributions from sponsors to provide academic scholarships to incoming college students. Since 2015, he also served as a youth basketball volunteer coach at the Pasadena YMCA and Pasadena HotShots youth basketball leagues. (See *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359 [performance of civic service and charitable work is entitled to

mitigation as evidence of good character under former standard 1.2(e)(vi)]; see also *Porter v. State Bar* (1990) 52 Cal.3d 518, 529.)

Restitution Without Threat or Force (Std. 1.6(j)): Respondent made full restitution of the unauthorized March 2014 credit card charges to Melamed in April 2014, prior to the State Bar's investigation and involvement, and without the threat or force of administrative, disciplinary, civil or criminal proceedings.

Additional Mitigating Circumstances:

Mistaken Belief: With regard to the Lopez matter, Respondent failed to inform the clients of the status of their lien and its eligibility for renewal by the date Respondent agreed to inform them, due to his mistaken belief that the deficiency in the lien rendered the time-sensitive disclosure of the research unnecessary by September 9, 2015, and his failure to do so based on that mistaken belief reflects an absence of bad faith on his part. Respondent is entitled to some mitigation under relevant case law in light of his actions taken upon his mistaken belief. (*Arm v. State Bar* (1990) 50 Cal.3d 763, 779-780 [In concealing his suspension from a court and sending a proposed settlement to opposing counsel while he was under suspension, an attorney mistakenly believed he was serving his client's interests, which lessened the seriousness of the attorney's misconduct].)

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*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 Spaiith* (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].)

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).)

In this matter, Respondent admits to committing two acts of professional misconduct. Standard 2.7(c) provides that suspension or reproof is the presumed sanction for performance or communication violations, which are limited in scope or time. The degree of sanction depends on the extent of the misconduct and the degree of harm to the client or clients.

Here, Respondent's misconduct is limited in both scope and time. In the Melamed matter, he failed to supervise his staff over a two-month period between February and March 2014, and in the Lopez matter, he failed to communicate a significant development over a one-week time-sensitive period in September 2015. Moreover, as stated above, there was no harm to the clients as a result of his misconduct and his mistaken belief contributed to his misconduct the Lopez matter.

While the scope of Respondent's misconduct and harm caused by his misconduct was limited, the nature his misconduct in the Melamed matter was serious as his failure to supervise his staff resulted in the unauthorized withdrawal of client funds for his legal fees and court costs, and the filing of a pleading with a court that contained his client's credit card information with his client's simulated signature, of which the client had no knowledge and did not authorize. The misconduct was also integrally related to his practice of law as it involved his non-delegable duties to safeguard client's credit card information and supervise his staff. While "an attorney cannot be held responsible for every detail of office procedure, he must accept responsibility to supervise the work of his staff." (*Vaughn v. State Bar*, *supra*, 6 Cal.3d 847, 857; see also *In the Matter of Aguiluz* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 41, 50 [an attorney has a "nondelegable duty reasonably supervise his staff"], citing *Spindell v. State Bar* (1975) 13 Cal.3d 253, 259-260; *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509, 520-521.) Therefore, Respondent's misconduct warrants a period of suspension.

However, Respondent's lack of prior record of discipline, his belated restitution to Melamed and his refund to Lopez reflect a willingness to conform to his ethical duties and that his misconduct is unlikely to recur. Accordingly, balancing the gravity of the misconduct with the presence of one aggravating factor and several mitigating circumstances (lack of prior record of discipline, lack of harm to the clients, good character, mistaken belief, and restitution), Respondent's misconduct warrants a period of suspension at the lower end of the range of the presumed sanctions identified in Standard 2.7(c). Accordingly, a one (1) year suspension, stayed, and a two (2) year probation with conditions, is appropriate discipline to protect the public, the courts and the legal profession; maintain the highest professional standards; and preserve public confidence in 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-14756	One	Business and Professions Code section 6106
15-O-14756	Two	Business and Professions Code section 6106
15-O-14756	Three	Business and Professions Code section 6106
15-O-14756	Four	Business and Professions Code section 6106

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of October 13, 2016, the prosecution costs in this matter are approximately \$4,670. 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 and State Bar Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: EMAHN COUNTS	Case number(s): 15-O-14756, 15-O-15517
--	--

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.

October <u>17</u> , 2016		Emahn Counts
Date	Respondent's Signature	Print Name
October _____, 2016	_____	Edward O. Lear
Date	Respondent's Counsel Signature	Print Name
October _____, 2016	_____	Anand Kumar
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: EMAHN COUNTS	Case number(s): 15-O-14756, 15-O-15517
--	--

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.

October _____, 2016	_____	Emahn Counts
Date	Respondent's Signature	Print Name
October 19, 2016	_____	Edward O. Lear
Date	Respondent's Counsel Signature	Print Name
October 20, 2016	_____	Anand Kumar
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:
EMAHN COUNTS


Case Number(s):
15-O-14756, 15-O-15517

STAYED 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.)**

November 17, 2017 

Date _____
YVETTE D. ROLAND
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on November 18, 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 San Francisco, California, addressed as follows:

EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045

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

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

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

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

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

Anand Kumar, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 18, 2016.


George Hue
Case Administrator
State Bar Court