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State Bar Court of California Hearing Department Los Angeles DISBARMENT		
Counsel For The State Bar Alex Hackert Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 213-765-1498 Bar # 267342	Case Number(s): 15-O-15623-DFM	For Court use only <div style="text-align: center;"> PUBLIC MATTER FILED SEP. 08 2016 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent Thomas Scott Simons 3721 Hearst Castle Way Plano, TX 75025 415-548-0344 Bar # 226484	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: THOMAS SCOTT SIMONS Bar # 226484 A Member of the State Bar of California (Respondent)		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **October 9, 2003**.
- (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."

(Effective November 1, 2015)

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- (7) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **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. See page 9.
- (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

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product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

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

Additional mitigating circumstances: Pretrial Stipulation, see page 9.

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 _____ in the amount of \$ _____ plus 10 percent interest per year from _____. If the Client Security Fund has reimbursed _____ 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 _____ days from the effective date of the Supreme Court order in this case.
- (3) ☐ **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: THOMAS SCOTT SIMONS

CASE NUMBER: 15-O-15623-DFM

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-15623 (State Bar Investigation)

FACTS:

1. On October 4, 2011, the California Supreme Court filed Order Number S195171 (State Bar Court Case No. 11-N-11115), which ordered that respondent be suspended from the practice of law for three years, that execution of the suspension be stayed, and that respondent be placed on probation for four years, including a two-year actual suspension. Probation conditions included that respondent submit proof of completion of State Bar Ethics School to the State Bar Office of Probation within 1 year of the effective date of discipline, submit quarterly reports to the Office of Probation, and contact the Office of Probation within 30 days of the effective date of discipline to schedule his required meeting with his assigned probation deputy. This discipline became effective on November 3, 2011. Respondent received the Supreme Court order imposing discipline.

2. On November 14, 2011, respondent's assigned probation deputy sent a letter to respondent's membership record address reminding respondent of the terms of the Supreme Court Order. The letter explicitly listed the above-mentioned terms of respondent's probation, and the deadlines for each condition's completion. Respondent received this letter.

3. Respondent did not contact the Office of Probation within 30 days of the effective date of discipline.

4. Respondent did not file his first quarterly report that was due by January 10, 2012.

5. On April 5, 2012, the probation deputy sent a letter to respondent's membership record address regarding's respondent's failure to contact the Office of Probation and filed the quarterly report due by January 10, 2012. Respondent received this letter.

6. Respondent did not timely file the quarterly report that was due by April 10, 2012.

7. Respondent did not timely file the quarterly report that was due by July 10, 2012.

8. On August 29, 2012, the probation deputy called respondent's membership records phone number. Respondent and the deputy scheduled a telephonic meeting for September 6, 2012. The meeting

was held as scheduled, during which the probation deputy and respondent reviewed the terms of respondent's probation.

9. On September 17, 2012, respondent belatedly filed with the Office of Probation the quarterly reports that were due by January 10, 2012, April 10, 2012 and July 10, 2012.

10. Respondent's quarterly report due by January 10, 2013, was filed late on January 11, 2013.

11. On June 20, 2013, respondent attempted to file a motion to modify the terms of his probation with the State Bar Court. The motion requested an additional two months to comply with his Ethics School requirement, and that respondent be allowed to attend a comparable course in Texas, where he resides. The motion was rejected by the State Bar Court due to defective service. Respondent received the court's notice of rejection.

12. Respondent's quarterly report due July 10, 2013, was filed late on July 15, 2013. The Office of Probation rejected the report due to respondent's failure to affirm compliance with the State Bar Act and Rules of Professional Conduct, as required.

13. Respondent's motion to modify the terms of his probation was filed on August 16, 2013.

14. Respondent's quarterly report due July 10, 2013, was refiled with the Office of Probation on August 29, 2013.

15. On September 4, 2013, the State Bar Court issued an order granting respondent's motion for an extension of time to complete Ethics School through December 13, 2013, and allowing respondent to take a comparable live, six hour Minimum Continuing Legal Education ("MCLE") class in Texas. Respondent received this order.

16. On January 23, 2014, respondent filed another motion to modify the terms of his probation, which requested an extension of time through March 2014 to complete a live MCLE course.

17. On March 6, 2014, the State Bar Court issued an order granting respondent's motion for an extension of time to complete his Ethics School probation condition. Respondent was given until March 20, 2014 to submit proof of completion of a live, six-hour MCLE class. Respondent received this order.

18. Respondent's quarterly report due April 10, 2014, was filed a late on April 25, 2014.

19. On March 14, 2014, respondent submitted to the Office of Probation proof of completing four hours of MCLE credits through the Texas Center for Legal Ethics.

20. On April 4, 2014, respondent filed a motion to modify the terms of his probation, as the course he took was "the only live class offered to members of the Texas State Bar," for ethics. Respondent requested that the two outstanding hours he needed to complete be waived, or that he be allowed to complete an online course.

21. June 6, 2014, the State Bar Court issued an order denying respondent's motion to modify his probation conditions since he did not indicate what steps he had taken to ascertain whether any other live MCLE classes were available in his area. Respondent received this order.

22. Respondent's final quarterly report, due November 3, 2015, was filed late on the November 9, 2015.

23. Respondent's quarterly report due October 10, 2015, was filed a late on November 23, 2015.

24. By the end of respondent's term of probation, he did not submit proof of completing Ethics School, or a comparable live, six hour MCLE course in Texas.

CONCLUSIONS OF LAW:

25. By failing to: contact the Office of Probation to schedule a meeting within 30 days from the effective date of discipline; failing to timely submit the quarterly reports due by January 10, 2012, April 10, 2012, July 10, 2012, January 10, 2013, July 10, 2013, October 10, 2015, and the final report due by November 3, 2015 to the Office of Probation; and failing to attend State Bar Ethics School, pass the test at the end of Ethics School and submit proof of same to the Office of Probation by November 3, 2012, and later modified to include completion of a comparable ethics course in Texas and to submit proof of same to the Office of Probation by March 20, 2014, respondent failed to comply with conditions attached to his disciplinary probation from Supreme Court Order Number S195171 (State Bar Court Case No. 11-N-11115), in willful violation of Business and Professions Code section 6068(k).

AGGRAVATING CIRCUMSTANCES.

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

In respondent's first record of discipline, effective May 30, 2010, respondent's default was taken after he failed to appear at trial. (State Bar case nos. 06-O-14505 and 06-O-15080.) Discipline consisted of a 3-year stayed suspension and a 90-day actual suspension that was to continue until the State Bar Court granted a motion to terminate the actual suspension.

This case involved two client matters. Regarding the first client matter, the State Bar Court found respondent culpable of violating Business and Professions Code sections 6068(a) [failure to obey laws] and 6106 [moral turpitude] for engaging in the unauthorized practice of law while respondent was on involuntary inactive status for MCLE noncompliance and failing to pay his State Bar membership fees. Respondent was also found culpable of a second count under Business and Professions Code section 6106 for filing a proof of service that falsely stated that respondent had served the opposing party. In the second client matter, respondent was found culpable of violating Business and Professions Code sections 6068(a) [failure to obey laws] and 6106 [moral turpitude], again for engaging in the unauthorized practice of law. Respondent's failure to participate in the disciplinary proceedings was found to be an aggravating factor.

In respondent's second record of discipline, effective November 3, 2011, discipline consisted of a three-year stayed suspension, four years of probation and a two-year actual suspension. (State Bar case no. 11-N-11115.) Respondent stipulated to a violation of California Rules of Court, rule 9.20 for failing to file a compliance declaration under rule 9.20(c), as required by California Supreme Court's order from his first record of discipline. Respondent's first record of discipline was considered in aggravation. Respondent was giving mitigating credit for entering into the stipulation.

Multiple Acts of Wrongdoing (Std. 1.5(b)). Violating multiple conditions of disciplinary probation constitutes multiple acts of misconduct and is worth “modest weight” in aggravation. (*In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348, 355.)

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged his 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 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].)

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.) 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).)

Since respondent has two prior records of discipline, Standard 1.8(b) must be addressed, which provides that:

If a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:

1. Actual suspension was ordered in any one of the prior disciplinary matters;

2. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or

3. The prior disciplinary matters coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities.

Both of respondent's prior records of discipline include significant periods of actual suspension, making disbarment appropriate under Standard 1.8(b)(1). The totality of respondent's disciplinary history and the facts of this case show that he is habitually unable to conform to his ethical obligations. In his first case, after being placed on inactive status for MCLE noncompliance and not paying his membership fees, respondent engaged in the unauthorized practice of law. This misconduct was aggravated by his failure to participate in the disciplinary proceedings. Respondent then violated California Rules of Court, rule 9.20 in his second case. Now, respondent has failed to comply with multiple conditions of his disciplinary probation. Respondent's probation became effective on November 3, 2011, yet he did not begin to comply with the terms of probation until August 2012. "[U]nwilliness or inability to comply with the conditions of probation imposed on [an attorney] by a Supreme Court order 'demonstrates a lapse of character and a disrespect for the legal system that directly relate to an attorney's fitness to practice law and serve as an officer of the court'." (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530, quoting *In re Kelley* (1990) 52 Cal.3d 487, 495.) Therefore, under Standard 1.8(b), respondent's disbarment is warranted.

COSTS OF DISCIPLINARY PROCEEDINGS.

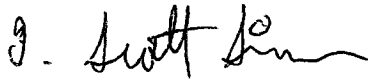
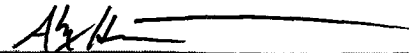
Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of August 10, 2016, the prosecution costs in this matter are \$3,669. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of THOMAS SCOTT SIMONS	Case number(s): 15-O-15623
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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 Fact, Conclusions of Law and Disposition.

<u>8/17/16</u>	<u></u>	<u>Thomas Scott Simons</u>
Date	Respondent's Signature	Print Name
<u>8/23/16</u>	<u></u>	<u>Alex Hackert</u>
Date	Deputy Trial Counsel's Signature	Print Name

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In the Matter of:
THOMAS SCOTT SIMONS

Case Number(s):
15-O-15623

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 Thomas Scott Simons 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

9/7/16



DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 8, 2016, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

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

THOMAS S. SIMONS
3721 HEARST CASTLE WAY
PLANO, TX 75025

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

ALEX HACKERT, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 8, 2016.



Rose M. Luthi
Case Administrator
State Bar Court