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**State Bar Court of California  
Hearing Department  
San Francisco  
ACTUAL SUSPENSION**



<p>Counsel for the State Bar</p> <p><b>Robert A. Henderson</b> Supervising Attorney 180 Howard Street San Francisco, CA 94105 (415) 538-2385</p> <p>Bar # 173205</p>	<p>Case Number(s): <b>16-O-16006</b></p>	<p>For Court use only</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b> <i>ms</i></p> <p><b>SEP 17 2018</b></p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p><b>Samuel Patrick Ouya Maina</b> 2140 Shattuck Ave., Suite 1110 Berkeley, CA 94704-1234 (415) 391-6612</p> <p>Bar # 176135</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: <b>SAMUEL PATRICK OUYA MAINA</b></p> <p>Bar # 176135</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 **April 17, 1995**.
- (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 **16** 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."

- (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. It is recommended that (check one option only):
- Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.
  - Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. **SELECT ONE** of the costs must be paid with Respondent's membership fees for each of the following years:  
  
If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be 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: **06-O-11154. See p. 13, also a "certified copy" is attached as Exhibit 1.**
  - (b)  Date prior discipline effective: **July 23, 2008.**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **rule 3-110(A).**
  - (d)  Degree of prior discipline: **Private Reproval.**
  - (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.
- (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 Respondent's misconduct.
- (10)  **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11)  **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable. **See p. 13.**
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [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 Respondent's 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 Respondent's 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 Respondent.
- (7)  **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.

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- (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 Respondent, 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 Respondent's control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's 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 Respondent's misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**Prefiling Stipulation - See p. 13.**

**D. Recommended Discipline:**

- (1)  **Actual Suspension:**

Respondent is suspended from the practice of law for **one year**, the execution of that suspension is stayed, and Respondent is placed on probation for **one year** with the following conditions.

- Respondent must be suspended from the practice of law for the first **30 days** of the period of Respondent's probation.

- (2)  **Actual Suspension "And Until" Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation and until Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

- (3)  **Actual Suspension "And Until" Restitution (Single Payee) and Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:





- (2)  **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3)  **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.
- (4)  **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5)  **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6)  **Quarterly and Final Reports:**
- a. Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.
- b. Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
- c. Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
- d. Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation

or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

- (7)  **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (8)  **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because
- (9)  **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (10)  **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete \_\_\_\_\_ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (11)  **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.
- (12)  **Minimum Continuing Legal Education (MCLE):** Within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete \_\_\_\_\_ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in SELECT ONE \_\_\_\_\_ and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the

date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.

- (13)  **Other:** Respondent must also comply with the following additional conditions of probation:
- (14)  **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (15)  **The following conditions are attached hereto and incorporated:**
- Financial Conditions  Medical Conditions
- Substance Abuse Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

#### F. Other Requirements Negotiated by the Parties (Not Probation Conditions):

- (1)  **Multistate Professional Responsibility Examination Within One Year or During Period of Actual Suspension:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Respondent's actual suspension, whichever is longer, and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2)  **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because
- (3)  **California Rules of Court, Rule 9.20:** Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20

is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (4)  **California Rules of Court, Rule 9.20 – Conditional Requirement:** If Respondent remains suspended for 90 days or longer, Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of “clients being represented in pending matters” and others to be notified is the filing date of the Supreme Court order, not any later “effective” date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney’s failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (5)  **California Rules of Court, Rule 9.20, Requirement Not Recommended:** It is not recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, because
- (6)  **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:



8. On December 9, 2015, respondent contracted with Dorothy Tarver (“Tarver”) to provide legal services to Y. Singh on a specific assignment basis.

9. On December 9, 2015, respondent emailed Tarver regarding an upcoming Master Calendar Hearing for Y. Singh. Respondent acknowledged that the I-589 Application had been “Lodged Not Filed.”

10. On December 10, 2015, Tarver attended the Master Calendar Hearing with Y. Singh. The matter was continued to December 17, 2015, based on respondent’s failure to provide Y. Singh with a copy of his Application to lodge with the Immigration Court.

11. On December 10, 2015, Tarver emailed respondent, notifying respondent that the Master Calendar Hearing for Y. Singh had been rescheduled to December 17, 2015.

12. On December 17, 2015, Tarver attended the Master Calendar Hearing with Y. Singh. Tarver and Y. Singh lodged Y. Singh’s I-589 Application with the Immigration Court. The Court set Y. Singh’s Individual Hearing for July 13, 2016. The Court also ordered that Y. Singh provide evidence of compliance with the biometrics and fingerprinting requirements necessary for the adjudication of the application, by June 13, 2016.

13. On December 22, 2015, Tarver emailed respondent, notifying respondent that Y. Singh’s Individual Hearing was scheduled for July 13, 2016 and providing a copy of Y. Singh’s I-589 Application stamped “Received” by the Immigration Court on December 17, 2015.

14. On June 24, 2016, an Order to Show Cause was issued, which noted that on December 17, 2015, Y. Singh was ordered to submit evidence of compliance with the biometrics and fingerprinting requirements necessary for the adjudication of the application, by June 13, 2016. The June 24, 2016, OSC gave Y. Singh to July 13, 2016, to submit evidence establishing either: (1) compliance with the biometrics and fingerprinting requirements necessary for the adjudication of the application, or (2) good cause as to why he had not complied within the time provided for by the court. The OSC was served on June 27, 2016.

15. On June 29, 2016, Tarver received the June 24, 2016 Order to Show Cause.

16. On July 1, 2016, Tarver notified respondent of the June 24, 2016 Order to Show Cause.

17. On July 1, 2016, in an email to Tarver, respondent acknowledged that he knew of Y. Singh’s Biometrics issue in the Immigration matter. Respondent asked Tarver to appear with Y. Singh at the July 13, 2016, Individual Hearing.

18. On July 13, 2016, at the Individual Hearing for Y. Singh, Tarver learned that the I-589 Application had not been received by USCIS. The Immigration Judge requested that Tarver contact respondent, to determine whether Y. Singh’s I-589 Application had been filed with USCIS. Tarver learned from respondent that the I-589 Application had not been filed with USCIS.

19. On July 13, 2016, at the Individual Hearing for Y. Singh, Y. Singh was ordered removed, his Asylum was denied, and his Withholding of Removal was denied.

20. Respondent's legal work for Y. Singh was so deficient so as to be worthless. Respondent therefore earned none of the \$4,000 paid in advance.

21. On July 22, 2016, Y. Singh terminated respondent's services.

22. On August 3, 2016, respondent returned the client file to Y. Singh, by USPS package.

23. On June 26, 2018, respondent refunded \$4,000 to Y. Singh.

#### CONCLUSIONS OF LAW:

24. By failing to file the I-589 Application with USCIS, by failing to obtain the Biometrics Appointment for Y. Singh, and by failing to ever properly file the I-589 Application for Y. Singh, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

25. By failing to refund the \$4,000 in unearned fees to Y. Singh until June 26, 2018, respondent willfully failed to promptly refund unearned fees in violation of Rules of Professional Conduct, rule 3-700(D)(2).

#### AGGRAVATING CIRCUMSTANCES.

**Prior Record of Discipline (Std. 1.5(a)):** On July 2, 2008, State Bar Court filed a Stipulation in case no. 06-O-11154 imposing a Private Reproval on respondent. The Private Reproval became effective on July 23, 2008. The stipulation involved a single immigration client matter in which respondent failed to perform competently. The matter involved significant harm, in that the client was ordered removed. (See Exhibit 1.)

**Highly Vulnerable Victim (Std. 1.5(n)):** Yudhvir Singh is an undocumented immigrant with a facially credible claim for asylum. Respondent's failure to perform competently has placed the client in position to be deported back to his country of origin, where he will face the issues that caused him to seek asylum in the first place.

#### MITIGATING CIRCUMSTANCES.

**Prefiling 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 Spaitth* (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 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 two acts of professional 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 2.7, which applies to respondent’s violation of Rules of Professional Conduct, rule 3-110(A).

Standard 2.7 provides that:

(b) Actual suspension is the presumed sanction for performance, communication, or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests.

(c) Suspension or revocation is the presumed sanction for performance, communication, or withdrawal 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.

In this matter, respondent failed to perform and failed to promptly refund unearned fees. Respondent has the aggravating factors of a prior record of discipline and a highly vulnerable victim, which is countered only with the pretrial stipulation. As the prior record of discipline also involved an immigration client, an actual suspension from the practice of law is warranted. Respondent belatedly refunded the unearned fees and has entered into a pretrial stipulation, therefore a long actual suspension is not necessary.

Case law supports a short actual suspension. In *Layton v. State Bar* (1990) 50 Cal.3d 889, the attorney failed to take steps to close an Estate. Layton was found to be indifferent to his misconduct and to have caused harm. In mitigation Layton had no prior record of discipline. The Supreme Court imposed a 30-day actual suspension.

Respondent in this matter failed to perform and failed to promptly refund fees. However, respondent recognized his wrongdoing, as evidenced by the pre-filing stipulation. However, the aggravating factor of a prior private reproof for failing to perform in an immigration matter, would suggest that an actual suspension is needed to protect the public and the profession. A 30-day actual suspension is necessary to protect the public and the profession, as well as follow the Standards and case law.

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

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of August 22, 2018, the discipline costs in this matter are \$3,500. 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**

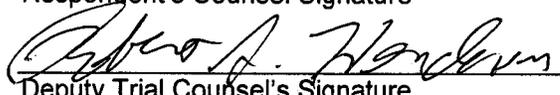
Respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course(s) to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: SAMUEL PATRICK OUYA MAINA	Case Number(s): 16-O-16006
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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>29 August 2018</u> Date	 Respondent's Signature	<u>Samuel P. O. Maina</u> Print Name
<u>8/27</u> Date	Respondent's Counsel Signature	Print Name
<u>8/31/2018</u> Date	 Deputy Trial Counsel's Signature	<u>Robert A. Henderson</u> Print Name

(Do not write above this line.)

In the Matter of: SAMUEL PATRICK OUYA MAINA	Case Number(s): 16-O-16006
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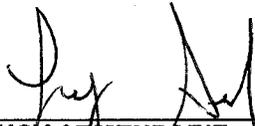
### ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

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

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 Rules Proc. of State Bar, rule 5.58(E) & (F).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order.** (See Cal. Rules of Court, rule 9.18(a).)

Sept. 17, 2018  
Date

  
LUCY ARMENDARIZ  
Judge of the State Bar Court



**CERTIFICATE OF SERVICE**

[Rule 62(b), Rules Proc.; 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 July 30, 2009, I deposited a true copy of the following document(s):

**ORDER GRANTING RESPONDENT'S MOTION FOR MODIFICATION OF  
CONDITIONS**

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

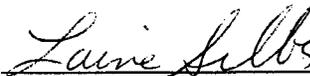
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

SAMUEL P. O. MAINA  
LAW OFC S OUYA MAINA  
332 PINE ST STE 707  
SAN FRANCISCO, CA 94104

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

TERRIE GOLDADE, Office of Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 30, 2009.



\_\_\_\_\_  
Laine Silber  
Case Administrator  
State Bar Court

(Do not write above this line.)

<b>State Bar Court of California Hearing Department San Francisco</b>		<b>CONFIDENTIAL</b>
<p>Counsel For The State Bar</p> <p><b>Susan I. Kagan</b> Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2037</p> <p>Bar # 214207</p>	<p>Case Number (s) 06-O-11154</p>	<p>(for Court's use)</p> <p style="text-align: center;"><b>NOT FOR PUBLICATION</b></p> <p style="text-align: center;"><b>FILED</b> </p> <p style="text-align: center;">JUL 02 2008</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p><b>Samuel P. O. Maina</b> 332 Pine Street, #610 San Francisco, CA 94104-3225 (415) 391-6612</p>	<p>Submitted to: <b>Settlement Judge</b></p>	
<p>Bar # 176135</p> <p>In the Matter Of: <b>Samuel P. O. Maina</b></p> <p>Bar # 176135</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>PRIVATE REPROVAL</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 **April 17, 1995**.
- (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 **9** 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".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(Do not write above this line.)

- (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 added to membership fee for calendar year following effective date of discipline (public reproval)
  - case ineligible for costs (private reproval)
  - costs to be paid in equal amounts for the following membership years:  
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - costs entirely waived
- (9) The parties understand that:
- (a)  A private reproval imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproval was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidents of a prior record of discipline under the Rules of Procedure of the State Bar.
  - (b)  A private reproval imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
  - (c)  A public reproval imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline** [see standard 1.2(f)]
- (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)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(Do not write above this line.)

- (3)  **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.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **See attachment.**
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. 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 deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. **See attachment.**
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct. **See attachment.**
- (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 in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical 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 Respondent no longer suffers from such difficulties or disabilities.
- (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.

(Do not write above this line.)

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- (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 good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**D. Discipline:**

- (1)  **Private reproof (check applicable conditions, if any, below)**
- (a)  Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b)  Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2)  **Public reproof (Check applicable conditions, if any, below)**

**E. Conditions Attached to Reproof:**

- (1)  Respondent must comply with the conditions attached to the reproof for a period of **one (1) year**.
- (2)  During the condition period attached to the reproof, 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

(Do not write above this line.)

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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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reproof.
- (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:
- (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)  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 of the effective date of the reproof.
- No MPRE recommended. Reason:
- (11)  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:**

Attachment language (if any):

## FACTS AND CONCLUSIONS OF LAW

### Facts

1. On December 11, 1998, Maria Subingsubing, a citizen of the Philippines, married American citizen, Carl Leroy Forch, in the Philippines. On September 7, 2000, Ms. Subingsubing immigrated as a lawful permanent resident of the United States on a conditional basis based on her marriage to Mr. Forch. On July 9, 2001, Mr. Forch filed for dissolution of marriage. The marriage was terminated on January 10, 2002.
2. Under the Immigration and Nationality Act, the termination of marriage within two years of admission to the United States raises the presumption that the alien procured a visa by fraud, which is a basis for Removal. However, one way a discretionary waiver of Removal may be obtained is if the alien can prove that the marriage was entered into in good faith and that the alien was battered by the spouse during the marriage.
3. On April 25, 2002, Removal Proceedings were initiated against Ms. Subingsubing in *In the Matter of Maria Melany FORCH-Subingsubing*, U.S. Immigration Court File No. A47751812, based on her divorce from Mr. Forch within two years of her admission to the United States.
4. In a separate venue, on June 12, 2002, Ms. Subingsubing filed a Petition to Remove the Condition on Permanent Resident ("I-751 Petition") with the District Director in the U.S. Department of Homeland Security. The filing of I-751 with the District Director is a basis to stay Removal Proceedings before the Immigration Court pending a determination on the I-751 Petition.
5. On August 4, 2003, respondent was hired to represent Ms. Subingsubing in the Removal Proceedings. At the time of hire, respondent knew that Ms. Subingsubing filed a I-751 Petition and that a pending I-751 petition stays Removal Proceedings. He also knew that Ms. Subingsubing was claiming she entered into her marriage with Mr. Forch in good faith and was abused by Mr. Forch during the marriage.
6. During his representation of Ms. Subingsubing, respondent primarily communicated with her through her uncle, Charles Scogins. During the representation, Mr. Scogins advised respondent that he had personal knowledge of Mr. Forch's abuse of Ms. Subingsubing.
7. On September 10, 2003, a Master Calendar Hearing was held in the Removal Proceedings. Respondent appeared at the hearing on behalf of Ms. Subingsubing. At the hearing, the Government Counsel represented that Ms. Subingsubing's I-751 Petition had been denied and that a copy of the denial would be served on respondent. However, a copy of the denial was never served on respondent during the Removal Proceedings because the I-751 Petition was not denied until February 7, 2006. At the Master Calendar Hearing, the Court scheduled a hearing on the merits to take place on April 26, 2004, and ordered respondent to file written pleadings in the matter by February 6, 2004.
8. Respondent did not file written pleadings by February 6, 2004. However, on February 25, 2004, respondent filed a motion to terminate proceedings. In the motion, respondent noted that Ms. Subingsubing was not removable since she had yet to receive proof that the I-751 Petition had been denied. Yet, respondent did not submit proof that the I-751 Petition was still pending before the District Director.
9. On March 11, 2004, the Immigration Court denied respondent's motion to terminate Removal Proceedings. In its decision, the Court noted that neither party had submitted evidence on the status of the I-751 Petition. The Court further noted that the sole issue in the Removal Proceedings was whether Ms. Subingsubing procured her visa by fraud.
10. Prior to April 26, 2004, Mr. Scogins notified respondent that he was available and willing to testify about Mr. Forch's abuse at the merits hearing.

(Do not write above this line.)

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11. On April 26, 2004, a merits hearing was held in the Removal Proceedings. Respondent did not object to the hearing going forward. Moreover, he failed to produce evidence that the I-751 Petition was still pending before the District Director, even though the Court requested such evidence in its March 11, 2004 order.

12. The only evidence introduced by respondent to prove that Ms. Subingsubing was abused by Mr. Forch during the marriage was Ms. Subingsubing's testimony and a copy of the I-751 Petition that she filed (before she hired respondent). On the other hand, the only witness called by the Government was the alleged abuser, Mr. Forch. Even though respondent knew that the Court could not rely solely on the testimony of the alleged abusive spouse, respondent did not object to or move to strike Mr. Forch's testimony. Moreover, respondent did not question Mr. Forch about the alleged abuse during his cross-examination.

13. After the merits hearing, the Court determined that Ms. Subingsubing failed to establish that she entered into the marriage with Mr. Forch in good faith and ordered her Removal.

### **Conclusions of Law**

By failing to object to the hearing going forward on April 26, 2004, failing to provide evidence during the Removal Proceedings that the I-751 Petition was still pending before the District Director, even though the Court requested such evidence in its March 11, 2004 order, failing to object to or move to strike Mr. Forch's testimony as improper and failing to question Mr. Forch about the alleged abuse during his cross-examination, respondent recklessly and repeatedly failed to perform with competence in violation of rule 3-110(A) of the Rules of Professional Conduct.

### **PENDING PROCEEDINGS**

The disclosure date referred to on page two, paragraph A (7) was May 29, 2008.

### **STATE BAR ETHICS SCHOOL**

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

### **SUPPORTING AUTHORITY**

Standard 2.4(b) suggests reproof or suspension for a respondent who has wilfully failed to perform services in which he was retained.

Based on the mitigation in this matter, which, in totality, outweighs the aggravating circumstance, a private reproof is the appropriate level of discipline.

### **FACTS SUPPORTING AGGRAVATING AND MITIGATING CIRCUMSTANCES**

#### **AGGRAVATING CIRCUMSTANCES**

Standard 1.2(b)(iv). Respondent's client was significantly harmed by his misconduct. Based on respondent's failure to perform with competence at the merits hearing, Ms. Subingsubing was ordered Removed from the United States. Thereafter, based on the Removal Order, Ms. Subingsubing's I-751 Petition was denied by the District Director. However, with the assistance of subsequent counsel Ms. Subingsubing was able to successfully appeal the prior determinations.

#### **MITIGATING CIRCUMSTANCES**

Standard 1.2(e)(i). Respondent has been in practice since 1995. He has no prior record of discipline.

Standard 1.2(e)(v). Respondent displayed spontaneous candor and cooperation to the State Bar during the disciplinary proceedings.

(Do not write above this line.)

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Standard 1.2(e)(vii). Respondent displayed remorse for his misconduct.

(Do not write above this line.)

In the Matter of Samuel P. O. Maina	Case number(s): 06-O-11154
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**SIGNATURE OF THE PARTIES**

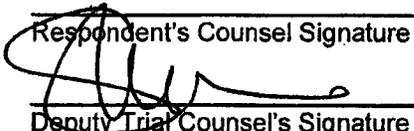
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

16 Dec 08  
Date

  
Respondent's Signature

Samuel P. O. Maina  
Print Name

6/17/08  
Date

  
Deputy Trial Counsel's Signature

N/A  
Print Name  
Susan I. Kagan  
Print Name

(Do not write above this line.)

In the Matter Of Samuel P. O. Maina	Case Number(s): 06-O-11154
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**ORDER**

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department 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 125(b), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

**Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.**

Date

June 23, 2008

Jay A. Ariza  
Judge of the State Bar Court  
Luz Ariz Mendez

**CERTIFICATE OF SERVICE**  
**[Rule 62(b), Rules Proc.; 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 July 2, 2008, 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:

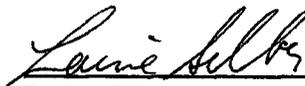
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**SAMUEL P. O. MAINA  
LAW OFC S OUYA MAINA  
332 PINE ST STE 707  
SAN FRANCISCO, CA 94104**

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

**SUSAN KAGAN, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **July 2, 2008**.



**Laine Silber**  
Case Administrator  
State Bar Court



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST July 31, 2018

State Bar Court, State Bar of California,  
Los Angeles

By *Christine D. [Signature]*  
Clerk

## 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 September 17, 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:

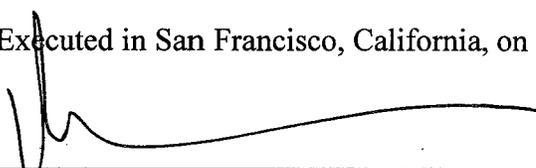
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

SAMUEL P. O. MAINA  
LAW OFC S OUYA MAINA  
2140 SHATTUCK AVE  
STE 1110  
BERKELEY, CA 94704 - 1234

- 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 September 17, 2018.

  
\_\_\_\_\_  
Vincent Au  
Court Specialist  
State Bar Court