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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
<p>Counsel For The State Bar</p> <p>Scott D. Karpf Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 Tel. (213) 765-1161</p> <p>Bar # 274682</p>	<p>Case Number(s): 16-O-16381-DFM</p>	<p>For Court use only</p> <p style="text-align: center;">PUBLIC MATTER</p> <p style="text-align: center;">FILED <i>JS</i></p> <p style="text-align: center;">MAR 12 2018</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>David M. Majchrzak Senior Counsel Klinedinst PC 501 W. Broadway, Suite 600 San Diego, CA 92101 Tel. (619) 239-8131</p> <p>Bar # 220860</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: BENJAMIN AGUILAR</p> <p>Bar # 283170</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>ACTUAL SUSPENSION</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 **June 6, 2012**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **14** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Effective July 1, 2015)



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **the three billing cycles following the effective date of the Supreme Court Order.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.

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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. **See Attachment to Stipulation, at page 10.**
- (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 Attachment to 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.
- (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 convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Extraordinary Good Character, see page 10.

Civic Service and Charitable Work, see pages 10 and 11.

Recognition of Wrongdoing, see page 11.

Prefiling Stipulation, see page 11.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **one year**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.
- (2) **Probation:**
- Respondent must be placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) **Actual Suspension:**
- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of **90 days**.

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- 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:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and present learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

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- (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: **Respondent attended Ethics School on December 15, 2016 and passed the test given at the end of that session. (See rule 5.135(A), Rules Proc. of State Bar [attendance at Ethics School not required where the attorney completed Ethics School within the prior two years].).**
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: BENJAMIN AGUILAR

CASE NUMBER: 16-O-16381-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. 16-O-16381 (Complainant: Gary Vick)

FACTS:

1. On June 9, 2014, Gary Vick hired respondent to represent him in *In re the Marriage of Vick*, case no. ED93273, a dissolution matter in the San Diego Superior Court.

2. On October 22, 2014, in response to the Court's request, respondent filed an Income and Expense Declaration ("I&E Decl.") on Mr. Vick's behalf. Of note, the I&E Decl. stated that Mr. Vick earned on average \$10,000 per month, and although Mr. Vick owned a Las Vegas property that he rented out, the space on the I&E Decl. related to rental income was left blank. Mr. Vick electronically signed the I&E Decl. and returned it to respondent via e-mail prior to it being filed with the Court.

3. On November 6, 2014, respondent filed a Request For Orders ("RFO"), on Mr. Vick's behalf, seeking modification of previously-set child and spousal support orders. A hearing date on the RFO was set for February 3, 2015.

4. On January 21, 2015, Ms. Vick filed a responsive RFO seeking Family Code § 271 sanctions against Mr. Vick based of the lack of financial information and supporting documentation attached to substantiate the information on his I&E Decl. filed on October 22, 2014.

5. Pursuant to a stipulation by all parties, the February 3, 2015 RFO hearing was continued and reset for April 14, 2015.

6. Between February 1, 2015 and the April 14, 2015 hearing, respondent and Mr. Vick communicated regularly via e-mail, and telephonically when Mr. Vick was available, to prepare for the April 14, 2015 hearing.

7. On March 18, 2015, respondent filed another I&E Decl. on behalf of Mr. Vick. Though there were minor changes made to the third page of the I&E Decl., the remainder of the I&E Decl. was the same as the I&E Decl. that had been filed on October 22, 2014, including leaving blank the space pertaining to whether Mr. Vick received rental income from any source. The I&E Decl. was signed electronically by Mr. Vick, and returned to respondent by e-mail for filing.

8. Respondent attended the April 14, 2015 hearing on the RFO modifying child and spousal support. During the hearing, the Court identified a number of deficiencies in Mr. Vick's I&E Decl., including that Mr. Vick owned and rented a property in Nevada but failed to include said rental income. Based on his failure to file accurate and forthright income information, the Court ordered Mr. Vick to pay \$1,500 in sanctions, pursuant to Family Code § 271.

9. In the evening of April 14, 2015, respondent e-mailed Mr. Vick a summary of the Court's orders. As to one of the orders, respondent wrote, "Additionally, since [Ms. Vick] will not be receiving as much money in spousal support the court ordered that you contribute \$1,500 towards her attorney's fees in costs." Respondent failed to accurately identify this payment of attorney's fees as Family Code § 271 sanctions due to Mr. Vick's failure to provide accurate and forthright income information.

10. On April 20, 2015, Mr. Vick received notice that his company was terminating his employment, effective May 20, 2015. Immediately upon learning this, Mr. Vick contacted respondent to request that respondent file another RFO on Mr. Vick's behalf to modify the child and spousal support orders based on a change in circumstances. Respondent received Mr. Vick's e-mail.

11. On May 27, 2015, Mr. Vick sent respondent an e-mail inquiring about the next steps in his divorce case. Respondent replied, stating, "[W]e need to file a motion for modification based on the fact that you lost your job. We need to file this motion ASAP."

12. On May 29, 2015, respondent e-mailed to Mr. Vick the signature page of the RFO to modify child and spousal support for Mr. Vick to sign. Mr. Vick replied to respondent's e-mail and attached the electronically-signed signature page for the RFO. Mr. Vick additionally asked respondent if said signed document was all that he needed. Respondent replied to Mr. Vick's e-mail stating, "This is all I need for now."

13. Respondent failed to notify Mr. Vick that an updated I&E Decl. would need to be submitted with the RFO.

14. On June 2, 2015, respondent filed the RFO, electronically-signed by Mr. Vick, and also filed an I&E Decl., dated May 28, 2015. The I&E Decl. was purportedly signed by Mr. Vick. However, though the first page of the I&E Decl. bears Mr. Vick's signature and the phrase "electronically signed by email" next to it, Mr. Vick had not electronically signed this document. Rather, respondent had cut-and-pasted a copy of Mr. Vick's electronic signature to this I&E Decl. from another document. Mr. Vick was unaware that respondent had filed this I&E Decl. using a cut-and-pasted version of his signature, and set for a hearing on August 18, 2015.

15. Though the first page of the I&E Decl., filed June 2, 2015, showed that Mr. Vick's employment had ended as of May 20, 2015 and that his monthly income was \$0, the remainder of the I&E Decl. was identical to the I&E Decl. that had been filed on March 18, 2015, including leaving blank the line pertaining to whether Mr. Vick received rental income from any source.

16. Between June 10, 2015 and June 23, 2015, respondent and Mr. Vick e-mailed each other numerous times in an attempt to set up a telephone conversation. In none of the e-mails sent to Mr. Vick did respondent mention that on June 2, 2015, he had submitted an I&E Decl. with a cut-and-pasted version of Mr. Vick's electronic signature.

17. On June 24, 2015, respondent and Mr. Vick spoke on the telephone for 30 minutes. At no time during that telephone call did respondent tell Mr. Vick that on June 2, 2015, he had submitted an I&E Declaration with a cut-and-pasted version of Mr. Vick's electronic signature.

18. On August 5, 2015, respondent mailed Mr. Vick a copy of the RFO documents that were served on Ms. Vick's attorney in anticipation of the August 18, 2015 hearing. Amongst the documents sent to Mr. Vick was a copy of the first page of the I&E Decl. that respondent filed on June 2, 2015 using Mr. Vick's cut-and-pasted signature. Though there was a signature arrow sticker pointing in the direction of the cut-and-pasted signature, there was nothing in the letter or written on the document alerting Mr. Vick to the fact that the document had been filed in court on his behalf.

19. On August 8, 2015, respondent e-mailed Mr. Vick regarding the August 18, 2015 hearing on the RFO. Respondent advised Mr. Vick that he did not believe the Court would make any modification to child support orders due to the fact that Ms. Vick had opened a Department of Child Support Services ("DCSS") case against Mr. Vick for non-payment of child support, and thus, DCSS had assumed jurisdiction over that issue.

20. On August 18, 2015, respondent appeared for Mr. Vick at the RFO hearing. Mr. Vick did not attend the hearing. The court determined that it could not modify child support orders due to the open DCSS case, but did consider, and deny, modifying spousal support.

21. At no time during the August 18, 2015 hearing did respondent inform the Court or Ms. Vick's attorney that respondent had filed an I&E Decl. using a cut-and-pasted electronic signature for Mr. Vick from another document.

22. After the August 18, 2015 RFO hearing, respondent e-mailed an update to Mr. Vick. In his e-mail, respondent advised Mr. Vick that the Court would not rule on a change in child support orders due to the court losing jurisdiction to the open DCSS case. Respondent claimed, "DCSS gets to determine how much you pay in support.... Long story short, nothing was accomplished today and we just have to wait to hear back from DCSS." Respondent stated he would write a longer e-mail the next day.

23. Respondent failed to send a longer e-mail regarding the RFO hearing events. At no time did respondent advise Mr. Vick that the Court heard arguments about modifying spousal support and declined to modify said spousal support based in part on Mr. Vick's failure to provide forthright and accurate income information on his I&E Decl.

CONCLUSIONS OF LAW:

24. By stating in writing to Gary Vick that the Court ordered that he pay attorney's fees to the opposing party because the other party would be receiving less spousal support when he knew that the Court's order was an imposition of Family Code § 271 sanctions against Mr. Vick due to Mr. Vick's failure to provide accurate and forthright income information to the opposing party in his I&E Decl., respondent thereby committed an act involving moral turpitude, dishonesty, or corruption in willful violation of Business and Professions Code § 6106.

25. By filing an Income and Expense Declaration in *In re the Marriage of Vick*, San Diego Superior Court case no. ED93273, dated May 28, 2015, bearing a signature purporting to have been signed by Gary Vick, under the penalty of perjury, when respondent knew that Mr. Vick did not sign the

document because respondent had cut-and-pasted Mr. Vick's signature from another document onto the Income and Expense Declaration, respondent thereby committed an act involving moral turpitude or dishonesty, in willful violation of Business and Professions Code § 6106.

26. By filing an Income and Expense Declaration in *In re the Marriage of Vick*, San Diego Superior Court case no. ED93273, bearing a signature purporting to have been signed by Gary Vick, under the penalty of perjury, when respondent knew that Mr. Vick did not sign the document because respondent had cut-and-pasted Mr. Vick's signature from another document onto the Income and Expense Declaration, and by intending the Court to rely on the purported signature as the genuine signature of Mr. Vick's, respondent thereby sought to mislead the judge or judicial officer and opposing counsel by an artifice or false statement of fact or law, in willful violation of Business and Professions Code, section 6068(d).

27. By failing to inform Gary Vick that the Court had issued Family Code § 271 sanctions against Mr. Vick; that Mr. Vick was required to file an updated I&E Decl. along with his RFO for modification of child and spousal support with the June 2, 2015 paperwork; that respondent had cut-and-pasted Mr. Vick's signature onto the Income and Expense Declaration, filed on June 2, 2015; and that the Court denied Mr. Vick's Request for Orders for Modification of Spousal Support Orders at the August 18, 2015 hearing, respondent failed to keep Mr. Vick reasonably informed about significant developments in his case, in willful violation of Business and Professions Code § 6068(m).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent has committed multiple acts of misconduct in this matter including misrepresenting the reason why Family Code § 271 sanctions were issued against Gary Vick; cutting-and-pasting Mr. Vick's signature from another document onto an Income and Expense Declaration before filing it with the Court; and failing to notify Mr. Vick of significant events including the ruling against Mr. Vick's request for modification of spousal support.

Significant Harm to Client, Public or Administration of Justice (Std. 1.5(j)): By filing an Income and Expense Declaration, dated May 28, 2015, using a cut-and-pasted electronic signature of Mr. Vick's, that was almost identical to a previously filed Income and Expense Declaration that the Court had found deficient, and by failing to admit to the Court that respondent had so acted, respondent's misconduct significantly harmed Mr. Vick's credibility in front of the Court, and harmed the administration of justice

MITIGATING CIRCUMSTANCES.

Extraordinary Good Character: Respondent has submitted six letters attesting to his good character. Four letters are from attorneys and two letters are from professors/educators. Even though letter writers acknowledge that they are aware of the full extent of respondent's misconduct and the seriousness of the allegations, they still hold respondent in high esteem and believe he is an exemplary attorney with impeccable character. (*In the Matter of Davis* (Review Dept. 2013) 4 Cal. State Bar Ct. Rptr. 576, 592 [significant weight afforded to attorney who provided character evidence from witnesses familiar with him and knowledge of his good character, work habits and professional skills].)

Civic Service and Charitable Work: Respondent has extensive involvement in the San Diego community. In 2015, respondent was honored with the San Diego County Bar Association's

Outstanding Community Service by a New Lawyer award. Respondent has been an active member and volunteer attorney for San Diego's Family Justice Center, assisting victims of domestic violence, sexual assault, and human trafficking, and working with the American Civil Liberties Union and California Innocence Project. Respondent currently serves on the board of directors for the National LGBT Bar Association; as the Co-Chair of both the Ethnic Relations and Diversity Committee and the Career Development Committee for the San Diego County Bar Association; and was a former president of the Tom Homann LGBT Law Association; and was a past board member of San Diego LA Raza Lawyers Association. Respondent currently serves as a board member for No Silence, No Violence, a non-profit that focuses on domestic violence awareness issues. Respondent deserves mitigation for his civic service and charitable work. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 339; see also *Porter v. State Bar* (1990) 52 Cal.3d 518, 529.)

Recognition of Wrongdoing: On December 15, 2016, respondent attended the State Bar of California Ethics School and passed the test given at the end of that session. However, the State Bar had sent respondent an inquiry letter on September 30, 2016, investigating allegations of misconduct made by Mr. Vick. Recognition of wrongdoing must be spontaneous, meaning a respondent takes responsibility before the State Bar has intervened. Respondent was aware of the disciplinary investigation at the time he attended Ethics School. Therefore, little to no mitigation should be afforded to him because his actions cannot be deemed spontaneous. (*In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 59)

Prefiling Stipulation: By entering into this stipulation, respondent is entitled to mitigation for 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. 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).)

Where multiple acts of misconduct are committed by Respondent and the Standards specify different levels of discipline for each act, "the most severe sanction must be imposed." (Std. 1.7(a).) In the present case, there are two, equally severe, applicable standards. Standard 2.11 states "[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any, and the extent to which the misconduct related to the member's practice of law." Standard 2.18 states "[d]isbarment or actual suspension is the presumed sanction for any violation of a provision of Article 6 of the Business and Professions Code, not otherwise specified in these Standards." Thus, either Standard is applicable to the current matter.

In *Drociak v. State Bar* (1991) 52 Cal.3d 1085, an attorney, who wanted to preserve his client's rights in a lawsuit she filed, drafted on his own and sent to the other party answers to interrogatories on behalf of his client attaching a pre-signed verification form attesting that the responses were his client's responses. At a later date, the attorney also responded to a request for documents and attached another pre-signed verification form. Only after the lawsuit was dismissed for lack of prosecution did the attorney learn that the client had died approximately six months prior to the attorney sending the first response to the interrogatories. The attorney was found culpable of violation Business and Professions §§ 6106 [moral turpitude] and 6068(d) [intending to mislead a judge or judicial officer]. In aggravation, the attorney showed a pattern of misconduct, his acts disclosed dishonesty and concealment, his use of presigned verification forms posed a threat to the administration of justice, and he failed to show remorse. In mitigation, the attorney had no prior record of discipline in 25 years of practice, he believed he was acting in his client's best interests, there was no financial harm to the client, and he was cooperative with the State Bar. The Supreme Court ordered a one year stayed suspension and two-year probation with conditions, including a 30-day actual suspension.

Though respondent's case is remarkably similar to *Drociak*, respondent's conduct is more egregious than *Drociak's*. Both respondent and *Drociak* committed acts of moral turpitude by submitting a document that included a client's signature under the penalty of perjury and attempting to mislead the receiving party of the genuineness of the document. However, unlike in *Drociak*, where the attorney actually had his client pre-sign the verification forms, thus likely anticipating the use of them, respondent cut-and-pasted Mr. Vick's name from another document and superimposed it onto an Income and Expense Declaration before attempting to deceive opposing counsel and the Court. In addition to this misconduct, respondent committed an act of moral turpitude against Mr. Vick by misrepresenting the nature of Family Code § 271 sanctions imposed against him as a mere award of attorney's fees as well as the reasons as to why the sanctions were imposed, and committed other misconduct by failing to inform his client about significant developments in his case. Overall, respondent's conduct is more severe, and said misconduct is magnified by the seriousness of the aggravation. However, in mitigation respondent has proffered copious amounts of evidence of good character and community service. Thus, given the nature of the misconduct, the fact that there are multiple acts and significant harm was caused

to the victim and to the administration of justice, balanced with mitigation, a 90-day actual suspension is appropriate to protect the public, the courts, and the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

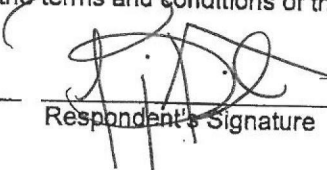
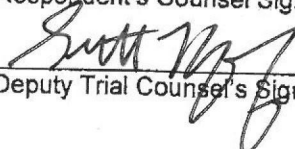
Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of February 12, 2018, the discipline costs in this matter are \$3,215. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: BENJAMIN AGUILAR	Case number(s): 16-O-16381-DFM
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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.

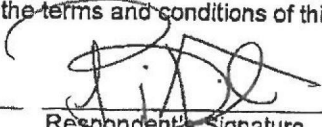
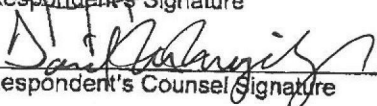
<u>02/22/18</u> Date	 Respondent's Signature	<u>Benjamin Aguilar</u> Print Name
<u> </u> Date	<u> </u> Respondent's Counsel Signature	<u>David M. Majchrzak</u> Print Name
<u>2/26/18</u> Date	 Deputy Trial Counsel's Signature	<u>Scott D. Karpf</u> Print Name

(Do not write above this line.)

In the Matter of: BENJAMIN AGUILAR	Case number(s): 16-O-16381-DFM
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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>02/22/18</u> Date	 Respondent's Signature	<u>Benjamin Aguilar</u> Print Name
<u>22 February 2018</u> Date	 Respondent's Counsel Signature	<u>David M. Majchrzak</u> Print Name
 Date	 Deputy Trial Counsel's Signature	<u>Scott D. Karpf</u> Print Name

(Do not write above this line.)

In the Matter of: BENJAMIN AGUILAR	Case Number(s): 16-O-16381-DFM
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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 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.)**

3/12/18
Date


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 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 Los Angeles, on March 12, 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 Los Angeles, California, addressed as follows:

DAVID M. MAJCHRZAK
KLINEDINST PC
501 W BROADWAY STE 600
SAN DIEGO, CA 92101 - 3584

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

SCOTT D. KARPF, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 12, 2018.



Mazie Yip
Court Specialist
State Bar Court