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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
Counsel For The State Bar  <b>Michaela Carpio</b> <b>Deputy Trial Counsel</b> <b>845 South Figueroa Street</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1338</b>  Bar # <b>304677</b>	Case Number(s): <b>16-O-17996</b> <b>17-O-01719</b>  kwiktag® 226 154 721 	For Court use only  <div style="text-align: center;"> <b>FILED</b>   <b>DEC 13 2017</b> <i>ap</i>   <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b> </div>
In Pro Per Respondent  <b>Franklin Samuel Adler</b> <b>424 South Beverly Drive</b> <b>Beverly Hills, CA 90212</b> <b>(310) 553-8533</b>  Bar # <b>56417</b>	<b>PUBLIC MATTER</b>	
In the Matter of: <b>FRANKLIN SAMUEL ADLER</b>  Bar # <b>56417</b>  A Member of the State Bar of California (Respondent)	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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

### A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 20, 1973**.
- (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 **15** 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. (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: **two 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.
- (7) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

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- (8) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. See pages 11-12.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See page 11.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.**

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$            on            in restitution to            without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

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

**Additional mitigating circumstances:**

**No Prior Discipline:** See page 12.  
**Character Evidence:** See page 12.  
**Prefiling Stipulation:** See page 12.

**D. Discipline:**

(1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of **one year**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:
- (b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of **one year**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **30 days**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

**E. Additional Conditions of Probation:**

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

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

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.  
  
☐ No Ethics School recommended. Reason: .
- (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:

☐ Substance Abuse Conditions

☐ Law Office Management Conditions

☐ Medical Conditions

☐ 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:** As a condition of probation, respondent shall provide James A. Kay, Jr. with an accounting of legal services rendered and refund Mr. Kay any unearned fees. Respondent shall provide satisfactory proof of compliance with this condition to the Office of Probation within 30 days after the effective date of discipline.

**ATTACHMENT TO**

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

IN THE MATTER OF: FRANKLIN SAMUEL ADLER

CASE NUMBERS: 16-O-17996 and 17-O-01719

**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-17996 (Complainant: Caridad Del Carmen Climaco)

**FACTS:**

1. On February 12, 2016, Caridad Del Carmen Climaco hired Franklin Samuel Adler (“respondent”) to represent her nephew, Carlos Climaco, in preparing and filing a writ of habeas corpus. Ms. Climaco paid respondent \$8,000 in advanced fees, which were comprised of two Bank of America loans obtained by Ms. Climaco and her brother.

2. Ms. Climaco, her brother, and Mr. Climaco never received a retainer agreement from respondent. In addition, Ms. Climaco and her brother never signed any fee agreement or 3-310(F) compliant waiver with respondent.

3. After he was hired, Ms. Climaco called respondent on several occasions to obtain a status update on Mr. Climaco’s case, but she never received an answer from respondent. During one phone call approximately six months after he was retained, respondent finally answered the phone and told Ms. Climaco that he was busy and that he would return her call. However, respondent never called her back.

4. On November 10, 2016, Ms. Climaco went to respondent’s office to speak to him about Mr. Climaco’s case. Ms. Climaco learned that respondent had not completed the writ of habeas corpus petition or filed the writ of habeas corpus petition on behalf of Mr. Climaco. Respondent apologized to Ms. Climaco and asked for more time to prepare and file a writ of habeas corpus petition. Ms. Climaco terminated respondent’s representation and requested a refund of her advanced fee. Respondent informed Ms. Climaco that he had spent all of the advanced fee.

5. On January 10, 2017, Mr. Climaco sent a letter to the State Bar stating that he never had any communication or contact with respondent. According to Mr. Climaco, he was aware that Ms. Climaco hired respondent on his behalf but respondent only spoke to Ms. Climaco as she hired and paid him.

6. On January 23, 2017, respondent submitted a response to the State Bar regarding the allegations by Ms. Climaco. Respondent confirmed that there was no retainer agreement because he “did not have the opportunity to prepare a Retainer Agreement.” Respondent also confirmed that “no documents were completed to be filed in court.” Respondent, however, explained the work he did included reviewing all documents in the file, researching and reading federal and state habeas corpus procedures and cases, and beginning to prepare a federal writ petition. Respondent would not provide

an accounting as he did not prepare hourly time sheets because he had a "flat-fee arrangement" with Ms. Climaco. Furthermore, Respondent admitted that he never contacted Ms. Climaco and never spoke to Mr. Climaco about the case. However, Respondent claimed that he received phone calls from an unnamed family member and answered his questions. Respondent denied that he did "nothing" on Mr. Climaco's case and stated that he did not have \$8,000 in his office to give to Ms. Climaco when she asked for a refund.

7. On February 6, 2017, respondent submitted a second response to the State Bar regarding the allegations by Ms. Climaco. Respondent again would not provide an accounting of the work he had done as it was on a "flat-fee" basis, and he did not keep a log of the time he spent reading habeas corpus cases or his contact with a federal habeas specialist. Respondent also provided a copy of the documents that he prepared for Mr. Climaco, which was a Petition for Writ of Habeas Corpus by a Person in State Custody, an 11-page form which was partially filled out in handwriting.

8. On June 2, 2017, respondent refunded \$8,000 to Ms. Climaco.

9. To date, respondent has failed to provide an accounting of the legal services rendered in the case.

#### CONCLUSIONS OF LAW:

10. On February 12, 2016, Caridad Del Carmen Climaco hired respondent to perform legal services, namely to represent her nephew, Carlos Climaco, by preparing and filing a petition for writ of habeas corpus. Respondent failed to prepare and file a petition for writ of habeas corpus with the court or perform any other legal services on behalf of Mr. Climaco. Therefore, respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

11. On February 12, 2016, respondent received advanced fees totaling \$8,000 to represent a client, Carlos Climaco, by preparing and filing a petition for writ of habeas corpus. Respondent failed to prepare the petition for writ of habeas corpus or file such petition with the court, and therefore, earned none of the advanced fees paid. Respondent failed to refund promptly, upon respondent's termination of employment on November 10, 2016, any part of the \$8,000 unearned fee to Mr. Climaco or to Mr. Climaco's representative. Therefore, respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2).

12. On February 12, 2016, respondent received the sum of \$8,000 as advanced fees for legal services to be performed on behalf of respondent's client, Carlos Climaco. Respondent thereafter failed to render an appropriate accounting to Mr. Climaco or to Mr. Climaco's representative regarding those funds upon the termination of respondent's employment on November 10, 2016. Therefore, respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

13. On February 12, 2016, respondent accepted a total of \$8,000 from Caridad Del Carmen Climaco as compensation for representing a client, Carlos Climaco, without obtaining Mr. Climaco's informed written consent to receive such compensation. Therefore, respondent willfully violated Rules of Professional Conduct, rule 3-310(F).

14. Respondent failed to respond promptly to reasonable status inquiries made on behalf of a client, Carlos Climaco, by Caridad Del Carmen Climaco, between February 12, 2016, and November 10,

2016, that respondent received in a matter in which respondent had agreed to provide legal services. Therefore, respondent willfully violated Business and Professions Code, section 6068(m).

Case No. 17-O-01719 (Complainant: James A. Kay, Jr.)

FACTS:

15. On January 20, 2010, James A. Kay Jr. retained respondent Franklin Samuel Adler ("respondent") to assist him in obtaining a concealed carry weapons ("CCW") permit.

16. On March 17, 2010, Mr. Kay paid respondent \$10,000 in advanced fees for this work. Mr. Kay and respondent never signed a retainer agreement as respondent was already representing Mr. Kay in a separate ongoing case.

17. On December 16, 2010, respondent submitted an application for a CCW permit on behalf of Mr. Kay to the Los Angeles Police Department ("LAPD").

18. On March 15, 2011, the LAPD denied Mr. Kay's CCW application as his request for a CCW permit did not meet the criteria for a CCW under the Penal Code.

19. On April 11, 2011, respondent sent a letter requesting review of Mr. Kay's CCW application to the Citizen Advisory Review Board, which recommended that the LAPD issue Mr. Kay a CCW permit. However, on February 15, 2012, the LAPD again denied Mr. Kay's CCW application because he did not meet the requirements for a CCW established by the LAPD as he was a non-resident of the City of Los Angeles.

20. On September 23, 2011, Mr. Kay paid respondent an additional \$2,000.

21. On March 29, 2012, respondent submitted an application for a CCW permit on behalf of Mr. Kay to the Los Angeles County Sheriff's Department ("LASD").

22. On April 30, 2012, the LASD denied Mr. Kay's CCW application as there was not good cause to issue such a permit to Mr. Kay. Specifically, Mr. Kay's CCW application did not contain convincing evidence of a current threatening situation.

23. On May 23, 2012, respondent sent a letter requesting reconsideration of Mr. Kay's CCW application to the LASD with additional information as to good cause. On July 5, 2012, the LASD again rejected Mr. Kay's CCW application as there was not good cause for issuance.

24. Respondent advised Mr. Kay that the only way to get a CCW permit was to sue the County of Los Angeles. On August 3, 2012, Mr. Kay and respondent signed a retainer agreement regarding the lawsuit against the LASD.

25. From August 16, 2012 to November 28, 2012, Mr. Kay paid respondent an additional \$30,000 in advanced fees for the legal services associated with the lawsuit against the County of Los Angeles.

26. On September 21, 2012, respondent filed a lawsuit against the County of Los Angeles in Los Angeles County Superior Court ("Superior Court"), *James A. Kay, Jr. v. The County of Los Angeles et al.*, case no. BC492384.

27. On July 28, 2014, upon stipulation by the parties, the Superior Court issued a stay in the case pending a decision in a Ninth Circuit case, *Peruta v. San Diego*, case no. 10-56971, which would be dispositive of Mr. Kay's case as it dealt with similar facts and issues.

28. On March 26, 2015, the Ninth Circuit vacated the panel decision in *Peruta* and ordered that the case be reheard *en banc*. The *en banc* oral arguments were heard on June 16, 2015.

29. During a status conference for Mr. Kay's case in early 2016, respondent moved to lift the stay, which the court lifted pending the final resolution of *Peruta*.

30. On April 15, 2016, the County of Los Angeles filed a motion for summary judgment.

31. On June 9, 2016, an *en banc* opinion was issued in *Peruta* holding that there is no Second Amendment right for members of the general public to carry concealed firearms in public.

32. Respondent failed to timely respond to the motion for summary judgment by June 30, 2016, as he believed that *Peruta* would be appealed and thus, the Ninth Circuit decision was not final.

33. On July 8, 2016, the County of Los Angeles filed a reply to Mr. Kay's non-opposition to the motion for summary judgment.

34. On July 13, 2016, respondent filed an opposition to the reply to Mr. Kay's non-opposition to the motion for summary judgment. In his opposition, respondent indicated that the *Peruta* matter was not yet final, and thus, he postponed replying to the county's motion for summary judgment. Ultimately, respondent took responsibility for failing to timely file a response.

35. On July 14, 2016, the Superior Court, which considered respondent's opposition to the county's summary judgment motion during oral arguments, issued a tentative ruling in favor of the County of Los Angeles. Given *Peruta*, Mr. Kay would have lost regardless of a timely filing of an opposition to the motion for summary judgment as *Peruta* controlled the outcome of Mr. Kay's case. Respondent failed to inform Mr. Kay of the tentative ruling.

36. On October 12, 2016, the Superior Court issued its decision finding that there were no triable issues of material fact in the case and entered a judgment in favor the County of Los Angeles. Respondent failed to inform Mr. Kay of this decision.

37. On January 28, 2017, Mr. Kay called respondent and requested a status update regarding his case. Respondent informed Mr. Kay that he lost. This was the first time Mr. Kay found out about the outcome of his case.

38. On February 27, 2017, Mr. Kay terminated respondent and requested a copy of his file and a refund of all fees.

39. On April 12, 2017, State Bar Investigator Alma Cueto requested that respondent provide the State Bar with an accounting of the legal services done on Mr. Kay's matter. Respondent failed to provide an accounting.

40. On June 21, 2017, State Bar Investigator Cueto again requested that respondent provide the State Bar with an accounting of the legal services done on Mr. Kay's matter. Respondent failed to provide an accounting.

41. To date, respondent has failed to provide an accounting of the legal services rendered in the case.

#### CONCLUSIONS OF LAW:

42. From March 17, 2010 to November 28, 2012, respondent received the sum of \$42,000 as advanced fees for legal services to be performed on behalf of respondent's client, James A Kay, Jr. Respondent thereafter failed to render an appropriate accounting to Mr. Kay regarding those funds upon the termination of respondent's employment on February 27, 2017. Therefore, respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

43. Respondent failed to keep respondent's client, James A. Kay, Jr., reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, by failing to inform Mr. Kay of the following:

- a. That the County of Los Angeles filed a motion for summary judgment against Mr. Kay on April 15, 2016;
- b. That respondent failed to file a response to the motion for summary judgment against Mr. Kay by June 30, 2016;
- c. That the County of Los Angeles filed a motion of non-opposition to the motion for summary judgment against Mr. Kay on July 8, 2016;
- d. That respondent tardily filed an opposition to the motion of non-opposition to the motion for summary judgment on July 13, 2016;
- e. That the Los Angeles County Superior Court issued a tentative ruling in favor of the County of Los Angeles on July 14, 2016; and
- f. That the Los Angeles County Superior Court entered a judgment in favor of the County of Los Angeles on October 12, 2016.

Therefore, respondent willfully violated Business and Professions Code, section 6068(m).

#### AGGRAVATING CIRCUMSTANCES.

##### **Multiple Acts of Wrongdoing (Std. 1.5(b)): Multiple Acts of Misconduct (Std. 1.5(b)):**

Respondent committed seven acts of misconduct in two client matters by failing to perform, failing to refund unearned fees, failing to provide an accounting, accepting fees from a non-client without the client's informed written consent, failing to promptly respond to reasonable client inquiries, and failing to the client reasonably informed of significant developments. Consequently, respondent's conduct is aggravated by multiple acts of misconduct. (See *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555.)

**Significant Harm to the Client, the Public, or the Administration of Justice (1.5(j)):** Because respondent failed to refund any unearned fees to Ms. Climaco or her brother until June 2017, Ms. Climaco did not have the funds to retain a new attorney for Mr. Climaco. Nor could Ms. Climaco take

out another loan to retain a new attorney as the loans she took out to pay respondent were still outstanding.

## MITIGATING CIRCUMSTANCES.

**No Prior Discipline:** Respondent was admitted to the practice of law on December 20, 1973, totaling 42 years of discipline-free practice at the time of misconduct. Respondent is entitled to substantial mitigation for a discipline-free record after a significant number of years of practicing law. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [The Supreme Court held that practicing law for over 20 years with no prior discipline was “highly significant”]); *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 [mitigation credit for many years of discipline free practice given even when conduct is serious].)

**Character Evidence:** Respondent provided five letters attesting to his good character to the State Bar. Such letters came from both professional and personal backgrounds in the legal community. However, such letters demonstrated that the references have a limited understanding of the facts surrounding respondent’s misconduct. Thus, this mitigating evidence should be afforded only limited weight. (See *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 477; *In re Ford* (1988) 44 Cal.3d 810, 818.)

**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).)

Respondent has committed seven acts of professional misconduct in two client matters. Pursuant to Standard 1.7(a), 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."

Here, the most severe sanction applicable to respondent's misconduct is found in Standard 2.2(b), which applies to respondent's violation of Rules of Professional Conduct, rule 4-100(B)(3) [Failure to Account], and Standard 2.7(c), which applies to respondent's violations of Rules of Professional Conduct, rule 3-110(A) [Failure to Perform with Competence], Business and Professions Code section 6068(m) [Failure to Promptly Respond to Reasonable Client Status Inquiries], and Business and Professions Code section 6068(m) [Failure to Keep Client Reasonably Informed of Significant Developments].

Standard 2.2(b) provides that suspension or reproof is the presumed sanction for any other violation of Rule 4-100, while Standard 2.7(c) provides that suspension or reproof is the presumed sanction for performance, communication, or withdrawal violations, which are limited in scope or time. The degree of harm depends on the extent of the misconduct and the degree of harm to the client or clients. Here, the violations encompass two client matters, and the aggravation is balanced by the mitigation, specifically, respondent's 42 years of discipline-free practice.

However, in addition to failing to provide an accounting, failing to perform with competence, failing to promptly respond to reasonable client status inquiries, and failing to keep the client reasonably informed of significant developments, respondent also accepted fees from a non-client without obtaining the client's informed written consent and failed to refund any portion of the unearned fees in the Climaco matter. Although respondent eventually refunded the entire fee of \$8,000 back to Ms. Climaco, it was after the State Bar became involved. Thus, in balancing the misconduct and the aggravation/mitigation, a one-year stayed suspension and one year of probation with conditions, including 30 days of actual suspension is appropriate in this case.

This level of discipline is also consistent with case law. In *Bach v. State Bar* (1991) 52 Cal.3d 1201, an attorney received discipline consisting of a 12-month stayed suspension and an actual suspension of 30 days and until he made restitution. The Supreme Court held that Bach failed to perform legal services in an uncontested marital dissolution matter, failed to communicate with his client for months at a time, withdrew from representation without the client's consent or court approval, failed to refund only \$2,000 in unearned fees, and failed to cooperate in the State Bar's investigation. In aggravation, Bach demonstrated a lack of insight into his wrongdoing. In mitigation, Bach had no record of prior discipline in 20 years of practice.

There are many similarities between respondent's misconduct and Bach's misconduct – Bach and respondent both failed to perform legal services with competence, failed to communicate with their clients, and failed to refund unearned fees. In contrast, while Bach improperly withdrew from employment and failed to cooperate in the State Bar's investigation in one client matter, respondent accepted fees from a non-client without the client's informed written consent and failed to provide an accounting in two client matters. It is also important to note that respondent refunded \$8,000 in unearned fees before the filing of the Notice of Disciplinary Charges while Bach failed to refund \$2,000

at any time before the case was heard before the Supreme Court. Moreover, although Bach and respondent both had no record of prior discipline, respondent has more than twice the amount of years than Bach. However, it is troubling that respondent still has not provided an accounting despite repeated requests from the State Bar. In analyzing the similarities and differences of two cases, a level of discipline similar to *Bach* is appropriate.

In light of the foregoing, a one-year stayed suspension and one year of probation with conditions, including 30 days of actual suspension and a refund of any unearned fees to Mr. Kay, will best serve the goals of protection of 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 November 17, 2017, the discipline costs in this matter are approximately \$6,430. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

#### **EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT**

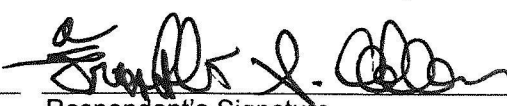
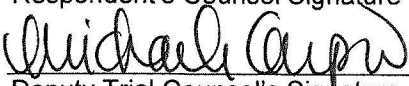
Respondent may not receive MCLE credit for completion of State Bar Ethics School and/or any other educational course(s) to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: <b>FRANKLIN SAMUEL ADLER</b>	Case number(s): <b>16-O-17996 and 17-O-01719</b>
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### SIGNATURE OF THE PARTIES

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

<u>11/24/17</u> Date	<u></u> Respondent's Signature	<u>Franklin Samuel Adler</u> Print Name
<u>11/28/17</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Michaela Carpio</u> Print Name

(Do not write above this line.)

In the Matter of: <b>FRANKLIN SAMUEL ADLER</b>	Case Number(s): <b>16-O-17996 AND 17-O-01719</b>
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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.

On page 1, heading, the box indicating that "Previous Stipulation Rejected" is checked.

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.)**

December 13, 2017  
Date

Cynthia Valenzuela  
CYNTHIA VALENZUELA  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 13, 2017, 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:

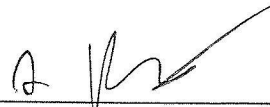
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

FRANKLIN SAMUEL ADLER  
424 SOUTH BEVERLY DRIVE  
BEVERLY HILLS, CA 90212

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

Michaela F. Carpio, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 13, 2017.

  
\_\_\_\_\_  
Stephen Peters  
Case Administrator  
State Bar Court