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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		kwiktag® 241 070 967 
Counsel for the State Bar Duncan Carling Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 Bar # 262387	Case Number(s): 17-O-05369	For Court use only PUBLIC MATTER FILED  JAN 15 2019 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Jerome Fishkin Fishkin & Slatter LLP 1575 Treat Blvd, Suite 215 Walnut Creek, CA 94598 Bar # 47798	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: STEVEN PABROS Bar # 120952 A Member of the State Bar of California (Respondent)		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 10, 1985**.
- (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 **17** 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."

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- (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:
 - (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.

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- (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. **See page 13.**
- (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.
- (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.

- (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:

No Prior record of Discipline, see page 14.

Pretrial Stipulation, see page 14.

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 **two years** 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:
 - a. Respondent makes restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
 - b. 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).)

(4) **Actual Suspension "And Until" Restitution (Multiple Payees) 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:
 - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. 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).)

(5) **Actual Suspension "And Until" Restitution (Single Payee) with Conditional Std. 1.2(c)(1) Requirement:**

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 for the first _____ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:
 - a. Respondent makes restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____ (or reimburses the Client Security Fund to the extent of any payment from the

Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and,

- b. If Respondent remains suspended for two years or longer, Respondent must provide 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).)

(6) **Actual Suspension "And Until" Restitution (Multiple Payees) with Conditional Std. 1.2(c)(1) Requirement:**

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 for the first _____ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:
 - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. If Respondent remains suspended for two years or longer, Respondent must provide 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).)

(7) **Actual Suspension with Credit for Interim Suspension:**

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 is suspended from the practice of law for the first _____ of probation (with credit given for the period of interim suspension which commenced on _____).

E. Additional Conditions of Probation:

- (1) **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's

compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

- (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

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:

7. Respondent learned of Alfeo Mattei's death in or about June 2016 after the Court of Appeal remanded the case but failed to inform the court or opposing counsel, as required by Sonoma County Superior Court Local Rule 4.1(A). Local Rule 4.1(A) states "When a party to a case dies, the attorney for that party shall promptly serve and file a notice with the court."
8. On March 8, 2017, the Superior Court denied a motion by the Weilers for summary judgment on the Matteis' cross-complaint. The Weilers moved for summary judgment on the grounds that there was no triable issue of material fact. Respondent knew at that time that Alfeo Mattei had died the previous year. Respondent opposed the motion for summary judgment, in part on the grounds that there was a triable issue of fact with regard to the parties' intent behind the lease. At the time, respondent knew that Alfeo Mattei was the only person who could have testified to the Matteis' intent behind the lease because Leeann Mattei was not involved in the lease. However, respondent failed to inform the court or the Weilers that Alfeo Mattei had died.
9. Respondent believed that he could prove the Matteis' intent either by legal argument, cross-examination of Mr. Weiler, or by use of an expert. However, respondent did not offer that as the basis for denying the motion for summary judgment and did not state in his response to the motion for summary judgment that Alfeo Mattei was unavailable due to his death. The court, unaware of Alfeo Mattei's death, denied the Weilers' motion for summary judgement, finding that there were triable issues of fact regarding the parties' intent behind the lease.
10. On April 7, 2017, the first day of trial, opposing counsel asked respondent why Alfeo Mattei was not on respondent's witness list. Respondent did not respond to the question.
11. On the morning of April 12, 2017, respondent and opposing counsel conferred with the judge in chambers. It was the third day of trial, but a jury had not been empaneled yet, as the court had been hearing pre-trial motions. Opposing counsel commented on the fact that Alfeo Mattei had not been in court the last three days, and that he was not on respondent's witness list. In the presence of the judge, opposing counsel asked respondent whether Alfeo Mattei was going to testify. Respondent did not respond to the question.
12. During the lunch break on April 12, 2017, opposing counsel searched for information on the Internet and learned that Alfeo Mattei had died. When the court resumed after lunch, the court granted the Weilers' motion to strike and ordered respondent to file a third amended cross-complaint by April 27, 2017. The court vacated the trial dates. Opposing counsel then advised the court that Alfeo Mattie was dead. The court asked respondent if Mattei was dead, and respondent answered "he has passed, yes."
13. On June 1, 2017, the Weilers brought a motion for sanctions against respondent on the grounds that respondent failed to promptly inform them or the court that Alfeo Mattei had died.
14. On July 25, 2017, the court found that respondent violated Local Rule 4.1(A) by failing to inform the court and opposing counsel of Alfeo Mattei's death. The court found that the violation was "particularly egregious" because respondent continued to litigate the case for over a year after his client died without informing the court and opposing counsel of Alfeo Mattei's death as required. The court ordered respondent to pay a total of \$31,160 in sanctions to the Weilers. Respondent failed to report the sanction order to the State Bar. The Sonoma County Superior Court reported the order to the State Bar on July 28, 2017.

15. On August 22, 2017, respondent appealed the sanction order and posted a bond, which stayed the sanction order. The appeal is still pending.
16. On October 25, 2017, the Weilers filed a second motion for summary judgement, arguing that there was no longer a triable issue of fact with regard to the parties intent behind the lease because Alfeo Mattei had died, and he was the only person who could testify to the Mattei's intent.
17. On December 7, 2017, the court granted the Weilers' second motion for summary judgment, finding that due to Alfeo Mattei's death, respondent no longer had a basis to claim there was a triable issue of fact as to the intent of the parties with regard to the lease.
18. On February 28, 2018, respondent appealed the motion for summary judgment. That appeal is still pending.

CONCLUSIONS OF LAW:

19. By failing to notify the court of Alfeo Mattei's death for over a year, even though respondent was aware that Alfeo Mattei had died, respondent violated Sonoma County Local Rule 4.1(A) which requires an attorney to file a notice with the court when a party to a case dies. Respondent thereby failed to maintain the respect due to the courts of justice and judicial officers, in willful violation of section 6068(b) of the Business and Professions Code.
20. By failing to notify opposing counsel and the court of Alfeo Mattei's death for over a year, even though respondent was aware that Alfeo Mattei had died, respondent suppressed evidence that respondent had a legal obligation to reveal to the court and opposing counsel, in willful violation of rule 5-220 of the former Rules of Professional Conduct.
21. By failing to notify the State Bar of the court's July 25, 2017 order that respondent pay \$31,160 in sanctions, respondent failed to report to the State Bar, in writing, within 30 days of the time respondent had knowledge of the imposition of judicial sanctions against him in excess of one thousand dollars (\$1,000), in willful violation of section 6068(o)(3) of the Business and Professions Code.

AGGRAVATING CIRCUMSTANCES.

Significant harm (Std. 1.5(j)). Respondent's failure to inform the court and opposing counsel of his client's death caused the opposing party, their attorney, and the court to undertake unnecessary legal work and delay, including preparation for trial and three days of pretrial hearings, resulting in sanctions of \$31,160. Had respondent informed the court and opposing counsel as required, that work and the cost to the Weilers and the court would not have been necessary. Respondent's failure to notify the court and opposing counsel of his client's death caused significant harm to the opposing party, who paid attorney's fees for the additional trial work, and respondent harmed the administration of justice. (See *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511 [unnecessary delay in court case caused by continuances based on misleading motions for continuances harmed the administration of justice] and *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1 [disruption of court

proceedings and delay in cases caused significant harm to the administration of justice].) Respondent's failure to inform the State Bar of the judicial sanctions also harmed the administration of justice.

MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: Respondent was admitted to the practice of law in California on December 10, 1985, and has no prior record of discipline. Respondent is entitled to highly significant mitigation for having practiced law for 30 years without discipline. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245.)

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 Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. Of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1.) The standards help fulfill the primary purpose 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 discipline 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 lesser 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).)

Standard 2.12(a) states that disbarment or actual suspension is the presumed sanction for disobedience or violation of the duties required under section 6068(b). Thus, the recommended discipline is consistent with the Standards. The recommended discipline is also consistent with case law.

In *In the Matter of Jeffers*, an attorney received a one-year stayed suspension after he intentionally misled a judge to believe that the defendant was alive. In a personal injury case, the court appointed a conservator to represent the defendant's interests after the defendant had a stroke. The attorney in *Jeffers* represented the conservator and had also known the defendant for many years. While the case was pending, the defendant died. Three months after the attorney learned of the defendant's death, the attorney appeared at a settlement conference and made statements to the court that implied that the defendant was still alive. He told the judge "I have discussed the case with defendant, he does not believe he is liable, but I still recommend [to the conservator] settling for 100k." The judge learned from other parties during the conference that the defendant was dead, and then he pressed the attorney to explain his recent interactions with the defendant. The attorney first admitted that the defendant "could not communicate," then conceded that the defendant's brain was not functioning, and eventually admitted that the defendant was dead. (*In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct Rptr. 211.)

The Review Department found that the attorney violated section 6068(d) and rule 5-200(B) by intentionally misleading the settlement conference judge regarding a material fact. The court noted that while the attorney's responses to the judge's questions were technically true, such answers did not avoid culpability. "It is settled that concealment of material facts is just as misleading as explicit false statements, and accordingly, is misconduct calling for discipline." (*Jeffers, supra*, 3 Cal. State Bar Ct Rptr. at 220, citing *Di Sabatino v State Bar* (1980) 27 Cal.3d 159.) The court found that the attorney's conduct violated section 6106 as well, but treated the misconduct as one violation. The attorney was also culpable of violating section 6068(b) based on his failure to appear at a previous mandatory settlement conference. The Review Department found that the misconduct was serious. (*Id.* at 225.) In mitigation, the court found that the attorney had practiced for over 30 years without discipline and gave limited weight to the testimony of his character witnesses. There were no factors in aggravation. The Review Department recommended a one-year stayed suspension with two years of probation in light of the mitigation, especially his many years of practice and lack of proven aggravating factors. (*Ibid.*)

Here, respondent engaged in a similar but more egregious concealment of a material fact. He did not give a false answer to a question from the court, but his refusal to answer opposing counsel's question in front of the court misled by omission. Further, his failure to disclose his client's death violated Local Rule 4.1(A) and his obligation not to suppress evidence that he is required to provide. Moreover, he failed to disclose the client's death even when responding to a motion for summary judgment when he knew the client's death was at least arguably relevant to that motion. Respondent also kept the deception for over a year while the matter was being litigated, wasting court and opposing parties' resources. In *Jeffers*, the attorney concealed the defendant's death for three months. Like the attorney in *Jeffers*, respondent has no prior record of discipline in more than 30 years of practice, but respondent also has an aggravating factor, whereas in *Jeffers* there was no aggravation. Here, the harm is more significant than in *Jeffers*, as the Weilers' attorney and the court performed more unnecessary work than the parties in *Jeffers*, at the expense of the opposing party. An actual suspension of 30 days is appropriate here because the harm in this case is much more significant than the lack of harm in *Jeffers*.

In *In the Matter of Harney*, the attorney received a six-month actual suspension after he misled his client and the court about the statutory limitations on his portion of the settlement. The attorney settled a medical malpractice case for \$3.45 million. Local court policy set the attorney's portion of the settlement at 25%, which was \$846,250, but the Medical Injury Compensation Reform Act ("MICRA") limited the attorney's fee in the case to \$579,400. The attorney was aware of the MICRA limitation but

did not inform the court or his client. The Review Department found that the attorney misled the court and his client about a material fact for his own gain, and thereby violated sections 6068(a), 6068(b), 6068(d), and 6106, and former rules 2-107 and 7-105. In mitigation, the attorney presented evidence of good character and a long record of professional accomplishments. In aggravation, the attorney had a prior record of discipline for similar misconduct, having previously received a public reproof for collecting a fee in excess of MICRA limitations. The Review Department also found significant harm to the client and the administration of justice, and recommended a six-month actual suspension. (*In the Matter of Harney* (Review Dept. 1995) 3 Cal State Bar Ct Rptr 266.)

Here, respondent's deception caused less harm than the harm in *Harney*, but still caused significant harm. In *Harney*, the attorney misled the court and his client in an attempt to recover an additional \$266,850 in attorney's fees. The attorney in *Harney* also had a prior record of discipline for similar conduct, whereas respondent has no record of discipline in 30 years of practice. A 30 day actual suspension in this case would be consistent with *Harney*, *Jeffers*, and the Standards.

Thus, given the misconduct, the aggravation and mitigation, and the Standards and case law, a 30-day actual suspension, one-year stayed suspension, and three-year probationary period with a condition that respondent attend State Bar Ethics School will serve the purposes of attorney discipline and be consistent with public protection.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of November 9, 2018, the discipline costs in this matter are \$3,300. 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

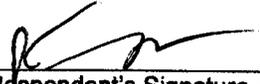
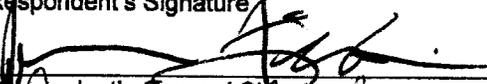
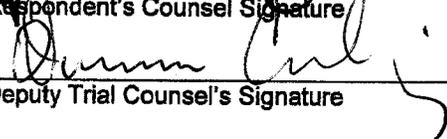
Respondent may not receive MCLE credit for completion of State Bar Ethics School ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: STEVEN PABROS	Case Number(s): 17-O-05369
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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>12-20-18</u> Date	 Respondent's Signature	<u>Steven Pabros</u> Print Name
<u>12-20-18</u> Date	 Respondent's Counsel Signature	<u>Jerome Fishkin</u> Print Name
<u>12/21/18</u> Date	 Deputy Trial Counsel's Signature	<u>Duncan Carling</u> Print Name

(Do not write above this line.)

In the Matter of: STEVEN PABROS	Case Number(s): 17-O-05369
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ACTUAL SUSPENSION ORDER

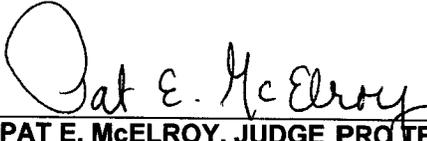
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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 p. 16, second paragraph, change "three-year" to "two-year" probationary period, as stipulated to on page 4 under Recommended Discipline.

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).)**

Date Jan. 15, 2019


PAT E. McELROY, JUDGE PRO TEM
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 San Francisco, on January 15, 2019, 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:

JEROME FISHKIN
FISHKIN & SLATTER LLP
1575 TREAT BLVD STE 215
WALNUT CREEK, CA 94598

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

DUNCAN C. CARLING, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 15, 2019.



Bernadette Molina
Court Specialist
State Bar Court