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**State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION**

<p>Counsel For The State Bar</p> <p>PAUL T. O'BRIEN 1149 S. HILL STREET LOS ANGELES, CA 90015-2299 (213) 765-1378</p> <p>Bar # 171252</p>	<p>Case Number(s): 10-J-08132</p>	<p>For Court use only</p> <p>FILED AUG 18 2011 <i>g</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>
<p>In Pro Per Respondent</p> <p>MATTHEW J. FAIRSHTER 7474 N. FIGUEROA ST., SUITE A LOS ANGELES, CA 90041 (323) 255-1333</p> <p>Bar # 131667</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: MATTHEW J. FAIRSHTER</p> <p>Bar # 131667</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 14, 1987.
- (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 10 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."



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

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case 02-O-10849
 - (b) Date prior discipline effective October 21, 2008
 - (c) Rules of Professional Conduct/ State Bar Act violations: rule 2-200, Rules of Professional Conduct
 - (d) Degree of prior discipline Public Reprimand
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct. Nesbitt Lacy, Respondent's former client and the ostensible victim of the misconduct, provided a declaration attesting that he did not suffer harm from Respondent's actions, and that he was fully aware at all times of the potential conflict of interest, sought independent counsel to discuss that potential conflict, and waived any conflict in connection with Respondent's representation of him in the Old Standard litigation, fully described hereinbelow.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. Respondent cooperated with the Office of the Chief Trial Counsel in its investigation of the underlying misconduct and further cooperated by entering into this stipulation of facts, conclusions of law, and discipline to be imposed.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

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- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline:

- (1) **Stayed Suspension:**
 - (a) Respondent must be suspended from the practice of law for a period of two years.
 - i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) 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.
 - i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), 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 learning and ability in the general law, pursuant to standard 1.4(c)(ii), 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:**

Attachment language (if any):

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MATTHEW J. FAIRSHTER

CASE NUMBER(S): 10-J-08132

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. 10-J-08132 (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

1. On or about March 28, 2007, the Committee on Conduct ("Committee") of the United States District Court for the District of Colorado filed charges against Respondent arising out of his actions in the United States Bankruptcy Court for the District of Colorado ("Colorado disciplinary proceedings").
2. On or about May 23, 2008, the Committee filed a motion for summary judgment in the Colorado Disciplinary Proceedings, seeking Respondent's disbarment in that court.
3. On August 18, 2010, the Disciplinary Panel of the United States District Court, District of Colorado, issued its Order on Motion for Summary Judgment and Final Judgment, granting in part and denying in part the Committee's motion. The Committee's motion for summary judgment was granted, and Respondent was suspended for three years.

FACTS:

4. Respondent and his law firm represented Nesbitt Lee Lacy in litigation with Stinky Love, Inc. ("SLI") involving the production of a movie. A judgment was entered against Lacy in that litigation; as a result, Lacy filed a Chapter 11 bankruptcy action in Colorado (where he was represented by bankruptcy counsel).
5. Respondent and his firm filed a request for permission with the Colorado bankruptcy court to continue representing Lacy in the litigation with SLI in California and filed a proof of claim for approximately \$284,000 for pre-petition legal services. SLI and the bankruptcy trustee opposed Respondent's requests. Respondent and his law firm did not pursue the application but continued representing Lacy in the SLI litigation in California.
6. In April 2001, SLI obtained a judgment against Lacy for \$6.26 million, the largest claim against the bankruptcy estate.

7. In September 2001, the Bankruptcy Court confirmed Lacy's Chapter 11 plan, reducing Respondent's pre-petition fees from \$284,000 to \$150,000. Under the plan, Lacy was to sell a property near Aspen, Colorado, in order to pay his unsecured creditors (including Respondent and his firm), as well as the principal lien holder on the property, Old Standard Insurance Company ("Old Standard").
8. Because the property sold for less than anticipated, Lacy had insufficient funds after the sale to pay the claims of the unsecured creditors.
9. Believing that Old Standard had received an overpayment, Lacy employed Respondent in May 2004 to file a lawsuit to recover the alleged overpayment. The retainer agreement granted Respondent's law firm a lien against Lacy's assets, including from any recovery in the Old Standard litigation, to ensure payment of attorney's fees for: pre-petition services in the sum of \$284,000; post-petition/pre-confirmation fees of \$216,000; and a contingent fee of up to 30% for services to be provided in the Old Standard litigation.
10. Lacy assented to the representation, after being advised that Respondent and he may have had conflicting interests. Lacy sought the advice of experienced counsel, who agreed that Lacy could consent to Respondent's representation.
11. In November 2004, Respondent filed a complaint on Lacy's behalf against Old Standard in the United States District Court, District of Colorado. Thereafter, when it became aware of the Old Standard litigation, SLI filed a motion in the bankruptcy court to require any recovery in the Old Standard litigation be deposited in the Bankruptcy Court's registry.
12. Respondent (and Lacy) opposed the motion. Respondent contemporaneously filed a Notice of Lien in the Old Standard litigation on June 10, 2005. The Bankruptcy Court held an evidentiary hearing on SLI's motion and ordered that the proceeds of the Old Standard litigation be deposited in the registry, and further disallowed Respondent's post-petition/pre-confirmation fees in their entirety. Respondent appealed the ruling to the 10th Circuit Bankruptcy Appellate Panel (BAP), which affirmed the Bankruptcy Court's orders.
13. During the pendency of the BAP appeal, Lacy and SLI settled all of their outstanding claims and sought approval of the bankruptcy court. Initially, Respondent objected, filing an objection tardily. Thereafter, Respondent and his law firm withdrew their appeal, but the Bankruptcy Court issued an OSC as to why Respondent should not be sanctioned.
14. Respondent was sanctioned, appealed the sanctions, and the 10th Circuit affirmed.

CONCLUSIONS OF LAW:

15. The disciplinary proceeding in the other jurisdiction provided Respondent with fundamental constitutional protection.
16. Respondent's conduct in the other jurisdiction as set forth above would warrant the imposition of discipline in California as violation(s) of the following:

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17. By not seeking permission of the Bankruptcy Court, to represent Lacy in the California SLI litigation, post-petition; by not informing the Bankruptcy Court that he continued to represent Lacy in the California SLI litigation; by not seeking permission of the Bankruptcy Court to represent Lacy in the Old Standard litigation, Respondent willfully violated 11 U.S.C. 327.

18. By violating 11 U.S.C. 327, Respondent willfully violated California Business and Professions Code section 6068(a).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was July 26, 2011.

AUTHORITIES SUPPORTING DISCIPLINE.

Business and Professions Code section 6049.1(a) – In any disciplinary proceeding under this chapter, a certified copy of a final order made by any court of record or any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys, of the United States or of the District of Columbia, determining that a member of the State Bar committed professional misconduct in such other jurisdiction shall be conclusive evidence that the member is culpable of professional misconduct in this state.”

Standard 2.10 – Culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a willful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3. In this matter, the ostensible victim, Respondent’s former client, Nesbitt Lacy, did not suffer harm, was aware of, consulted counsel regarding, and waived the potential conflict of interest with Respondent.

Standard 1.3 – The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member’s professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of the rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

COSTS OF DISCIPLINARY PROCEEDINGS.


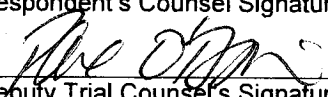
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 26, 2011, the prosecution costs in this matter are \$2,797. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: MATTHEW J. FAIRSHTER	Case number(s): 10-J-08132
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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>Aug 4, 2011</u> Date	<u></u> Respondent's Signature	<u>Matthew Fairster</u> Print Name
<u>8/08/11</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Paul O'Brien</u> Print Name

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In the Matter of: MATTHEW J. FAIRSHTER	Case Number(s): 10-J-08132
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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.)**

Date 8/18/11


Judge of the State Bar Court

DONALD F. MILES

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 August 18, 2011, I deposited a true copy of the following document(s):

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

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:

**MATTHEW J. FAIRSHTER
EMAT CAPITAL MANAGEMENT, LLC
7474 N FIGUEROA ST STE A
LOS ANGELES, CA 90041**

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

PAUL O'BRIEN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 18, 2011.



Tammy Cleaver
Case Administrator
State Bar Court