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<b>State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION</b>		
<p>Counsel For The State Bar</p> <p><b>Kimberly G. Anderson</b> Senior Trial Counsel Office of the Chief Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017-2515 Telephone: (213) 765-1083</p> <p>Bar # 150359</p>	<p>Case Number(s): 13-O-14482-DFM 14-O-03065 (INV)</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 2em;"><b>PUBLIC MATTER</b></p> <p style="text-align: center; font-size: 1.5em;"><b>FILED</b></p> <p style="text-align: center; font-size: 1.2em;">JUL 30 2014 <i>R</i></p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p><b>Alexander Warren Tucker</b> 181 Rea Avenue, Suite F El Cajon, CA 92020 Telephone: (619) 442-1050</p> <p>Bar # 202794</p>	<p>Submitted to: <b>Settlement Judge</b></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: <b>ALEXANDER WARREN TUCKER</b></p> <p>Bar # 202794</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 **November 23, 1999**.
- (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."

(Effective January 1, 2014)

Actual Suspension



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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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline**
  - (a)  State Bar Court case # of prior case **11-O-14258. See Stipulation Attachment at page 11.**
  - (b)  Date prior discipline effective **May 22, 2013**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Rules 4-100(B)(3) and 3-310(F), Rules of Professional Conduct**
  - (d)  Degree of prior discipline **One (1) year stayed suspension, one (1) year probation and four (4) months' actual suspension**
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (2)  **Dishonesty:** Respondent's misconduct was intentional, 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. **See Stipulation Attachment at page 11.**
- (8)  **Restitution:** Respondent failed to make restitution.
- (9)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(g) & 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 deemed serious.
- (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 and to the State Bar during disciplinary investigation and proceedings.
- (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 with a good faith belief that was honestly held and 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.
- (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.

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(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:**

**Pre-filing and Pre-Trial Stipulation - See Stipulation Attachment at page 11.  
Emotional/Physical Difficulties - See Stipulation Attachment at pages 11-12.**

**D. Discipline:**

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of **three (3) 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 1.2(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 **three (3) 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 **two (2) 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 1.2(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 learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.

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- (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: **Respondent has already completed Ethics School on June 19, 2014, which was a condition of his disciplinary probation in Case No. 11-O-14258. (See rule 5.135, Rules of Procedure of the State Bar of California).**
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

**F. Other Conditions Negotiated by the Parties:**

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- (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: **The protection of the public does not require passage of the MPRE in this case since Respondent has already been ordered to take and pass the MPRE in his prior State Bar Case No. 11-O-14258. Respondent is currently suspended due to his failure to take and complete the MPRE as ordered in Case No. 11-O-14258 and will remain suspended until he takes and passes the MPRE. (See, In the Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181).**

- (2)  **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5)  **Other Conditions:**

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

IN THE MATTER OF: ALEXANDER WARREN TUCKER

CASE NUMBERS: 13-O-14482-DFM and 14-O-03065 (INV)

**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. 13-O-14482-DFM (Complainant: Gehan Michael)**

**FACTS:**

1. On June 29, 2012, Gehan Michael ("Michael"), retained Respondent to represent her in an asylum application and Michael and Respondent signed a retainer agreement. The retainer agreement stated Respondent would file all documents necessary to submit an I-589 application and appear at the asylum interview with Michael at US Customs & Immigration Service ("USCIS") for \$2,500. Michael paid Respondent \$2,500 cash and received a handwritten receipt.
2. On September 21, 2012, Respondent submitted the I-589 application and a G-28 notice of appearance as Michael's counsel with respect to Michael's asylum application before the USCIS.
3. On April 22, 2013, the California Supreme Court filed an Order ("Order") in Case No. S208641 (State Bar Court Case No. 11-O-14258), that Respondent be suspended from the practice of law for one year, that execution of suspension be stayed, and that Respondent be placed on probation for one year subject to the conditions of probation as recommended by the State Bar Court Hearing Department, including a condition that Respondent be actually suspended from the practice of law for the first four months of the period of probation.
4. On April 22, 2013, the Clerk of the California Supreme Court properly served the Respondent with a copy of the Order. Respondent received the Order, which became effective on May 22, 2013, thirty days after it was filed. Pursuant to the Order, the Respondent was ordered to comply with the California Rules of Court, Rule 9.20, and to 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 order, including notifying by June 21, 2013 all clients being represented in pending matters of his suspension and filing a declaration by July 1, 2013 in the State Bar Court attesting to his notification of his clients of his suspension.
5. In May 2013, Michael sent Respondent emails inquiring about the status of her matter. On May 17, 2013, Respondent replied to Michael that he would inquire about the status of her matter and let her know when her asylum interview would take place. Respondent did not mention the fact that he had been suspended from the practice of law in the case entitled *In re Alexander Tucker*, State Bar Court case number 11-O-14258 for four months, which would take effect on May 22, 2013.

6. Between June 29, 2012 and May 22, 2013, Respondent had performed a substantial amount of work for Michael and the only thing left to do was to attend the asylum interview once the USCIS scheduled the interview.

7. On June 28, 2013, Respondent executed a declaration attesting to his compliance with the order ("Rule 9.20 compliance declaration"), which he filed with the State Bar Court on July 1, 2013. In his Rule 9.20 compliance declaration, Respondent stated that he had notified all pending clients of his suspension as required by Rule 9.20, subdivision (a). However, at no time had Respondent notified Michael of his suspension. Although Respondent filed the Rule 9.20 compliance declaration falsely stating that he had notified all pending clients of his suspension, Respondent's conduct was negligent and was not intentional or grossly negligent. At the time Respondent filed his declaration, he and Michael were still awaiting notice from the USCIS of a date for Michael's asylum interview, there was no activity occurring on Michael's case, and there were some discussions between Respondent and Michael about Respondent withdrawing from representing Michael prior to the asylum interview. Respondent was also winding down his law practice, and he was suffering an illness at the time he filed the affidavit. On September 24, 2013 (less than three months after he filed the Rule 9.20 compliance declaration), Respondent was hospitalized and subsequently underwent a triple bypass (which was his third heart surgery) involving ongoing problems with congestive heart failure. Respondent also underwent a number of doctor's visits prior to his triple bypass where he was having various symptoms and the doctors were trying to diagnose him and Respondent was taking approximately ten different medications during the time he executed the Rule 9.20 compliance declaration. Respondent only had a few remaining clients and he notified them of his suspension, but he overlooked his obligation to notify Michael, or to otherwise seek to withdraw from representing her.

8. On July 9, 2013, without Respondent's knowledge, Michael scheduled an asylum interview with USCIS on her own for July 12, 2013 and she did not provide Respondent with notice of the interview. Respondent did not receive notice of the interview from USCIS. Michael attended the interview on her own and was granted asylum.

9. On July 18, 2013, Respondent emailed Michael to tell her he had sent a letter to USCIS on her behalf since his telephone inquiries had gone unanswered. In the email, Respondent held himself out as an attorney. The email contained a default electronic signature including "Esq." after Respondent's name and his law office information. The email also contained a status update on the asylum representation. Respondent attached a copy of the letter he had sent to USCIS to the email that he sent to Michael. In the letter to USCIS, Respondent held himself out as Michael's attorney. The letter was typed on attorney letterhead, and "Esq." appeared after Respondent's name. Respondent did not tell Michael at any time that he had been suspended in State Bar Court case number 11-O-14258.

10. Michael responded to Respondent's email by telling him that he was too late and she had attended the July 12, 2013 interview without him. She further indicated that she had a new attorney, and she requested a refund of the \$2,500. Respondent replied by email that he performed a substantial amount of work, which he described, and he advised Michael that she would not be getting a refund. He also indicated in the email that he did not receive any notification of the scheduling of the interview from her or from USCIS.

#### CONCLUSIONS OF LAW:

11. By failing to comply with the April 22, 2013 order of the Supreme Court of California in *In re Tucker*, Supreme Court case number S208641, requiring Respondent to comply with California Rules



of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, of May 22, 2013, in that he did not notify Michael of his suspension, Respondent disobeyed or violated an order of the court requiring Respondent to do or forbear an act connected with or in the course of Respondent's profession which Respondent ought in good faith to do or forbear in willful violation of Business and Professions Code section 6103.

12. By failing to comply with all provisions of the State Bar Act, including Business and Professions Code section 6103, between May 22, 2013, and July 1, 2013, Respondent failed to comply with a condition attached to his disciplinary probation in State Bar case number 11-O-14258, in willful violation of Business and Professions Code section 6068(k).

Case No. 14-O-03065 (State Bar Investigation)

**FACTS:**

13. On April 22, 2013, the California Supreme Court issued an Order ("Order") in Case No. S208641 (State Bar Court Case No. 11-O-14258), that Respondent be suspended from the practice of law for one year, that execution of suspension be stayed, and that Respondent be placed on probation for one year subject to the conditions of probation as recommended by the State Bar Court Hearing Department, including a condition that Respondent be actually suspended from the practice of law for the first four months of the period of probation.

14. On April 22, 2013, the Clerk of the California Supreme Court properly served the Respondent with a copy of the Order. Respondent received the Order, which became effective on May 22, 2013, thirty days after it was filed. A State Bar Probation Deputy also sent Respondent a courtesy letter reminding him of his probation conditions.

15. Pursuant to the Order, the Respondent was ordered to comply with the following relevant conditions of probation, among other conditions:

- Respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
- Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10, and October 10 of each year or part thereof in which Respondent is on probation (reporting dates). However, if Respondent's probation begins less than 30 days before a reporting date, Respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, Respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit under penalty of perjury under the laws of the state of California as follows:
  - (a) in the first report, whether Respondent had complied with all of the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and
  - (b) in each subsequent report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all

other conditions of probation since the beginning of probation during that period.

During the last 20 days of this probation, Respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, Respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

- Within one year after the effective date of the Supreme Court order in this matter, Respondent must attend and satisfactorily complete the State Bar's Ethics School and the State Bar's Client Trust Account School and provide satisfactory proof of such completion to the State Bar's Office of Probation.

16. Respondent had actual knowledge of the orders and conditions of probation at all relevant times herein from the effective date of his probation and at all times during the pendency of his probation.

17. Respondent did not meet the following conditions:

- Respondent failed to submit two quarterly reports by their due dates of July 10, 2013 and October 10, 2013;
- Respondent failed to submit his final report by the due date of May 22, 2014;
- Respondent failed to attend State Bar Ethics School and failed to provide proof of attendance at State Bar Ethics School by the due date of May 22, 2014; and
- Respondent failed to attend State Bar Client Trust Account School and failed to provide proof of attendance at State Bar Client Trust Account School by the due date of May 22, 2014.

18. Respondent did attempt to file his July 10, 2013 quarterly report on July 11, 2013. The Office of Probation marked the report received as late, but not filed because Respondent did not check the box regarding compliance or lack of compliance with the State Bar Act and Rules of Professional Conduct. On July 17, 2013, Respondent's second version of the July 10, 2013 quarterly report was filed late by the Office of Probation.

19. On October 8, 2013, Respondent submitted his October 10, 2013 quarterly report. The Office of Probation marked the report received, but did not accept it for filing due to missing information. Respondent resubmitted the October 10, 2013 quarterly report again on October 18, 2013. The Office of Probation marked the report received, but did not accept it for filing due to missing information. On January 20, 2014, Respondent submitted his October 10, 2013 quarterly report a third time, and the Office of Probation accepted it for filing on January 20, 2014.

20. Even though Respondent's probation had terminated in Case No. 11-O-14258 on May 22, 2014, the Respondent has subsequently completed Ethics School on June 19, 2014 and he has completed Client Trust Account School on June 20, 2014. Respondent has also submitted a final report to the Office of Probation, which was filed on June 20, 2014.

## CONCLUSIONS OF LAW:

21. By failing to comply with all conditions attached to his disciplinary probation in State Bar Court case number 11-O-14258 between May 22, 2013 and May 22, 2014, including, failing to submit two quarterly reports by their due dates of July 10, 2013 and October 10, 2013, failing to submit his final report by the due date of May 22, 2014, failing to attend State Bar Ethics School and failing to provide proof of attendance at State Bar Ethics School by the due date of May 22, 2014, and failing to attend State Bar Client Trust Account School and failing to provide proof of attendance at State Bar Client Trust Account School by the due date of May 22, 2014, Respondent failed to comply with conditions attached to Respondent's disciplinary probation in State Bar case number 11-O-14258, in willful violation of Business and Professions Code section 6068(k).

## AGGRAVATING CIRCUMSTANCES.

**Prior Record of Discipline (Std. 1.5(a)):** Effective May 22, 2013, Respondent was disciplined in Supreme Court case number S208641 (State Bar Court case number 11-O-14258). Respondent received a four-month actual suspension in 2013 for failing to render accounts of client funds in violation of rule 4-100(B)(3) of the Rules of Professional Conduct. The prior misconduct occurred between 2008 and 2011. The prior misconduct was aggravated by the fact that Respondent accepted payments from a third party without complying with the requirements of rule 3-310(F) of the Rules of Professional Conduct, which the court found to constitute uncharged misconduct. The prior misconduct was mitigated by the fact that Respondent had no prior record of discipline. Respondent's prior record of discipline constitutes an aggravating circumstance pursuant to standard 1.5(a).

**Multiple Acts of Misconduct (Std. 1.5(b)):** Respondent committed two separate acts of misconduct in State Bar Court case number 13-O-14482 and seven separate violations of his probation in State Bar Court case number 14-O-03065. Respondent's multiple acts of misconduct constitute an aggravating factor pursuant to standard 1.5(b).

## MITIGATING CIRCUMSTANCES.

### Additional Mitigating Circumstances:

**Prefiling Stipulation and Pretrial Stipulation:** Respondent has entered into comprehensive stipulations to facts and conclusions of law in filed case number 13-O-14482 prior to trial and in unfiled investigation case number 14-O-03065, which will save the State Bar and the State Bar Court substantial resources. (*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].)

**Emotional/Physical Difficulties:** Beginning in December 2012, Respondent, who is now 77 years of age, has suffered from a number of medical issues, which had affected his ability to comply with his disciplinary probation in case number 11-O-14258, and which affected his judgment in filing the Rule 9.20 declaration without realizing that he was still listed as counsel of record in Gehan Michael's political asylum case. Respondent had notified all other clients of his suspension, but he overlooked Michael's matter because there was no activity taking place in the case at the time of his suspension as Respondent and Michael were awaiting notification of a date for an asylum hearing. Specifically, Respondent suffered from ongoing problems requiring repeated doctors and hospital visits relating to his medical conditions relating to his digestive system, diabetes and his multi-vascular

coronary artery disease between December 2012 and continuing until early 2014. Respondent also underwent a number of doctor's visits prior to his triple bypass where he was having various symptoms and the doctors were trying to figure diagnose him and Respondent was taking approximately ten different medications during the time he executed the Rule 9.20 compliance declaration. On September 24, 2013, Respondent (who had previously underwent two heart surgeries in 2008 and 2009) was hospitalized and ultimately underwent a triple bypass heart surgery. Respondent was discharged October 7, 2013. While recovering at home, Respondent suffered developed additional medical complications as a result of problems from a prior 1973 colon resection surgery for diverticulitis. Respondent began experiencing significant symptoms on or about December 5, 2013 and was again hospitalized on December 5, 2013. Respondent underwent another surgery for that additional condition on December 9, 2013 and was discharged from the hospital on December 13, 2013 to continue his recovery at home, with periodic follow up doctor's visits. As a result of his medical conditions, Respondent did not obtain and respond to his mail on a regular basis in late 2013 and early 2014. When Respondent began responding to his mail, he learned that the State Bar had filed case number 13-O-14482 against him, and then he focused his attention on responding to that matter, and not on taking care of the additional remaining probation conditions listed in case number 14-O-03065. Respondent's heart, diabetes and digestive problems are stabilized at this time.

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, Respondent admits to committing three separate ethical violations involving nine acts of professional misconduct. Standard 1.7(a) requires that where a Respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

Both Standard 2.8 and California Rules of Court, rule 9.20 appear to state a similar applicable sanction. Standard 2.8 applies to Respondent's violation of Business and Professions Code section 6103. This violation of the Supreme Court order is a violation of rule 9.20 of the California Rules of Court, which specifies the applicable sanctions for a violation of the rule. Standard 2.8 provides that "[d]isbarment or actual suspension is appropriate for disobedience or violation of a court order related to the member's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068(a)-(h)." California Rules of Court, rule 9.20 provides that "[a] suspended member's willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation."

Respondent's disobedience of a Supreme Court order is serious and is directly related to his practice of law. The potential for harm to the client was great, but the actual harm was not significant. The client elected to schedule and attend her asylum interview without an attorney, and her application for asylum was granted. The nexus between Respondent's misconduct and any harm suffered by the client is weakened by the client's failure to provide Respondent with notice of the scheduling of her interview.

Standard 1.8(a) also applies. It states that "[i]f a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust." Respondent's prior discipline included a four-month actual suspension, therefore the current sanction should be greater than four-months actual suspension. In addition, the presumptive discipline in cases involving violations of rule 9.20 and/or former rule 955 is disbarment, Respondent must also receive substantial discipline. However, the evidence establishes that Respondent's significant medical issues caused or contributed to the misconduct. Respondent has also demonstrated he is sincere about complying with probation in the future and that he has the ability to comply with probation as evidenced by his belated compliance with the probation conditions in case number 11-O-14258, which warrants a lesser level of discipline. (See Standards 1.7(b) and 1.7(c), indicating the court should consider whether an attorney has the ability to conform to ethical standards in the future.) Respondent has since completed State Bar Ethics School on June 19, 2014, State Bar Client Trust Account School on June 20, 2014, and Respondent has also submitted a final report to the Office of Probation, which was filed on June 20, 2014. Respondent has acknowledged that his age, coupled with his medical issues, makes it difficult for him to practice law and he began winding down his law practice in December 2012 and has stopped practicing law as of May 22, 2014 and is currently retired. Respondent accepts responsibility for and acknowledges that he committed serious misconduct warranting substantial discipline. Respondent does not intend to practice law in the future and acknowledges that, if he were to practice law in the future, before he should be permitted to practice law, he should be required to satisfy the conditions of Standard 1.2(c)(1). Based upon a consideration of Respondent's misconduct, as well as the factors in aggravation and in mitigation, three years' probation, three years stayed suspension and a two-year actual suspension and until Respondent satisfies Standard 1.2(c)(1) is the appropriate discipline and disbarment is not warranted.

This level of discipline is also supported by case law. Although disbarment is generally the appropriate sanction for a willful violation of [former] rule 955 (*Bercovich v. State Bar* (1990) 50 Cal. 3d 116, 131) in *Shapiro v. State Bar* (1990) 51 Cal.3d 251, the Court imposed a one-year actual suspension on an attorney for a violation of former rule 955 and an abandonment of a single client. The attorney's misconduct in *Shapiro* was less serious than the Respondent's misconduct in this matter, since the record in *Shapiro* established that the attorney was given misinformation from his probation monitor regarding compliance with former Rule 955, the attorney attempted to file the Rule 955 affidavit one

month late on the date originally erroneously provided to him by the probation monitor, and when the affidavit was rejected due to inadequate reporting of compliance with former Rule 955, the attorney hired counsel and immediately corrected to problem within a few weeks. While Respondent's misconduct was more serious than the attorney's misconduct in *Shapiro*, disbarment is not warranted in this matter. As discussed above, Respondent's significant medical issues caused or contributed to the misconduct. Respondent has demonstrated he is serious about complying with probation in the future as evidenced by his belated compliance with the probation conditions. Respondent will also remain actually suspended for two years, and in the event that he decides to practice law in the future, he will first have to satisfy Standard 1.2(c)(1).

#### **DISMISSALS.**

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
13-O-14482	Two	6106
13-O-14482	Four	6106

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

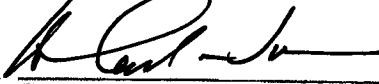
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of June 30, 2014, the prosecution costs in this matter are approximately \$4,452.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: ALEXANDER WARREN TUCKER	Case number(s): 13-O-14482-DFM and 14-O-03065 (INV)
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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.

7/9/2014            Alexander WARREN TUCKER  
Date                      Respondent's Signature                      Print Name

\_\_\_\_\_  
Date                      Respondent's Counsel Signature                      Print Name

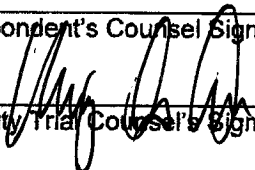
\_\_\_\_\_  
Date                      Deputy Trial Counsel's Signature                      Print Name

(Do not write above this line.)

In the Matter of: ALEXANDER WARREN TUCKER	Case number(s): 13-O-14482-DFM and 14-O-03065 (INV)
--	--

### 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.

Date	Respondent's Signature	Print Name
Date	Respondent's Counsel Signature	Print Name
7/9/14		KIMBERLY G. ANDERSON
Date	Deputy Trial Counsel's Signature	Print Name



(Do not write above this line.)

In the Matter of: ALEXANDER WARREN TUCKER	Case Number(s): 13-O-14482; 14-O-03065
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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.)**

July 30, 2014  
Date

  
\_\_\_\_\_  
GEORGE E. SCOTT, 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 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 <select city>, on July 30, 2014, 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:

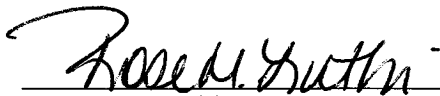
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ALEXANDER W. TUCKER  
LAW OFFICE OF ALEXANDER TUCKER  
181 REA AVE SUITE F  
EL CAJON, CA 92020

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

KIMBERLY ANDERSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 30, 2014.



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Rose M. Luthi  
Case Administrator  
State Bar Court