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**State Bar Court of California
Hearing Department
San Francisco
ACTUAL SUSPENSION**

Counsel For The State Bar

Laura Huggins
Deputy Trial Counsel
180 Howard Street
San Francisco, CA 94105
(415) 538-2537

Bar # 294148

Case Number(s):
15-O-13786-LMA
15-O-14055
15-O-14613
16-O-10164

For Court use only

PUBLIC MATTER

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Counsel For Respondent

Megan Zavieh
Zavieh Law
12460 Crabapple Road, Suite 202-272
Alpharetta, CA 30004
(404) 465-6110

Bar #206446

Peter Brixie
Attorney at Law
410 12th Street
Sacramento, CA 95814
(916) 658-1880

Bar # 124186

Submitted to: **Settlement Judge**

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

ACTUAL SUSPENSION

PREVIOUS STIPULATION REJECTED

In the Matter of:
DAPHNE LORI MACKLIN

Bar # 117189

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, 1984**.
- (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.



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

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

- (1) **Prior record of discipline**
 - (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.

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- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See Attachment to Stipulation, at page 17.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.

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- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Record of Discipline - See Attachment to Stipulation, at page 18.
Pretrial Stipulation - See Attachment to Stipulation, at page 18.
Family Difficulties - See Attachment to Stipulation, at page 18.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **one (1) year**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.
- (2) **Probation:**
- Respondent must be placed on probation for a period of **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 ninety (90) days.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

E. Additional Conditions of Probation:

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

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

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

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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:
- | | |
|-----------------------------------------------------|-----------------------------------------------------------|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason: .
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: .
- (5) **Other Conditions: Mental Health Conditions - See Attachment to Stipulation, at pages 20-21. Fee Arbitration Conditions - See Attachment to Stipulation, at pages 21-22.**

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In the Matter of: DAPHNE LORI MACKLIN	Case Number(s): 15-O-13786-LMA, 15-O-14055, 15-O-14613, 16-O-10164
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Robert Solla	\$2,025	July 25, 2014
Nathaniel Saunders	\$750	April 11, 2013

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **120 days prior to the expiration of probation, notwithstanding section (b) of the Financial Conditions.**

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
Robert Solla	\$50	monthly
Nathaniel Saunders	\$50	monthly

- 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.

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

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- b. Respondent has kept and maintained the following:
 - i. A written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and,
 - 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
 - c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
 - i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAPHNE LORI MACKLIN

CASE NUMBERS: 15-O-13786-LMA, 15-O-14055, 15-O-14613, 16-O-10164

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and Rules of Professional Conduct.

Case No. 15-O-13786 (Complainant: Robert Solla)

FACTS:

1. On February 26, 2014, Robert and Aurea Solla ("the Sollas") obtained a monetary judgment against Dispatch Transportation, LLC in small claims court. On July 25, 2014, Robert Solla hired respondent to help him collect the judgment. On that same date, the parties signed a fee agreement and respondent received a flat fee of \$2,025. In July of 2015, respondent stopped returning Robert Sollas' phone calls and ceased all communications with the Sollas. Over a period of nearly three years, respondent performed no services of value and has yet to return the \$2,025 flat fee.

2. On July 10, 2013, the Sollas were involved in an auto collision. On August 1, 2014, the Sollas signed a fee agreement where respondent agreed to handle the Sollas' personal injury and property damage claims arising from the auto collision for a flat fee of \$5,500. The Sollas were required to pay the flat fee in the following three installments: the first installment was due at the signing of the fee agreement in the amount of \$1,833.33; the second installment was due on October 1, 2014, in the amount of \$1,833.33; and the third installment was due on January 1, 2015, in the amount of \$1,833.34. The Sollas paid the first and second installments.

3. On August 12, 2014, respondent filed a civil complaint in *Robert Solla v. Quenta Givens*, in Sacramento County Superior Court case number 34-2014-00167533 ("*Solla v. Givens*").

4. On April 24, 2015, opposing counsel, Stephen Baker ("Mr. Baker"), served discovery on respondent in *Solla v. Givens*. Specifically, Mr. Baker propounded Form Interrogatories, Special Interrogatories, and Request for Production of Documents, which respondent received shortly thereafter.

5. On June 4, 2015, Mr. Baker sent respondent a letter and email stating that, although he had not received a discovery response, he would grant respondent an additional ten days to provide the necessary disclosures. The letter also informed respondent that further inaction on her part could result in sanctions. Respondent received these communications but never responded.

6. On September 8, 2015, Mr. Baker telephoned respondent concerning the outstanding discovery and to discuss trial and settlement conference dates. Respondent told Mr. Baker that she was unable to speak at length but would call back the following day. On September 9, 2015, after

respondent failed to call, Mr. Baker telephoned respondent and left her a voicemail. Respondent never returned Mr. Baker's calls.

7. On September 9, 2015, Mr. Baker sent respondent an email stating that they needed to work together to select trial dates and to schedule a settlement conference as well as address the outstanding discovery requests. Mr. Baker told respondent that if he did not hear from her he would file a motion to compel.

8. On September 30, 2015, a Long Cause Civil Trial Assignment was set for hearing on February 23, 2016, in *Solla v. Givens*.

9. On October 14, 2015, Mr. Baker filed a Motion to Compel Plaintiff's Responses to Interrogatories and Request for Production of Documents and Request for Sanctions ("Motion to Compel") in *Solla v. Givens*. The Motion to Compel requested sanctions in the amount of \$740 to reimburse Mr. Baker for the time he spent preparing and appearing in court on the motion. Mr. Baker served respondent with a copy of the Motion to Compel, which respondent received, but respondent failed to respond.

10. On November 13, 2015, the Honorable David Brown granted Mr. Baker's Motion to Compel in *Solla v. Givens*. However, the court declined to award sanctions. Respondent was ordered to provide discovery on or before November 23, 2015. Respondent received notice of the court's order.

11. On December 4, 2015, Robert Solla and Aurea Solla failed to appear at their respective depositions, which had been previously scheduled by Mr. Baker. Respondent was also absent. On that date, Mr. Baker telephoned respondent and asked her if she and her clients were going to attend. Respondent stated that she was not going to make an appearance at either Robert's or Aurea's depositions. At this time, the Sollas were unaware that they were to be deposed by Mr. Baker. Respondent never informed the Sollas of the noticed depositions, and never informed them that she spoke with Mr. Baker about their failure to attend deposition. Mr. Baker provided respondent with proper notice of the Sollas' depositions and respondent never objected to the depositions taking place on December 4, 2015.

12. On December 8, 2015, Mr. Baker filed a Notice of Motion to Strike Complaint for Failure to Obey Order Compelling Answers to Written Discovery and Failure to Appear at Depositions ("Motion to Strike") in *Solla v. Givens*. The Motion to Strike was based on respondent's failure to comply with a court order to provide discovery on or before November 23, 2015, and the Sollas' failure to appear at deposition on December 4, 2015. Mr. Baker requested sanctions in the amount of \$900 for reasonable expenses and attorney's fees that he incurred preparing the Motion to Strike. Respondent was served with a copy of the Motion to Strike, which respondent received, but failed to respond.

13. On January 14, 2016, the Honorable Steven Rodda denied the Motion to Strike without prejudice, including the request for sanctions, and ordered respondent to provide written discovery on or before January 24, 2016, in *Solla v. Givens*. The court also vacated the mandatory settlement conference date of January 20, 2016, as well as the trial date of February 23, 2016. The court served a copy of the order on respondent, which respondent received.

14. Between November 6, 2014, and June 16, 2015, respondent received emails, letters, and a courtesy phone call from the State Bar regarding her Minimum Continuing Legal Education ("MCLE") requirements, including four communications that alerted respondent to her non-compliance. On or

about July 10, 2015, respondent received mailed notice that her suspension went into effect on July 1, 2015.

15. Respondent did not inform the Sollas that, between July 1, 2015, and January 31, 2016, she was on administrative inactive status due to Minimum Continuing Legal Education ("MCLE") non-compliance and was therefore unable represent the Sollas in accordance with the fee agreements dated July 25, 2014 and August 1, 2014.

16. Respondent failed to respond to State Bar letters dated August 20, 2015, September 4, 2015, and January 20, 2016, which were sent to respondent's official State Bar membership records address and were actually received by respondent, requesting a written response to the allegations of misconduct in State Bar case number 15-O-13786.

17. Respondent's address as maintained on the State Bar's official membership record pursuant to Business and Professions Code section 6002.1 has remained the same since September 4, 2012.

18. In late March of 2013, and prior to respondent's misconduct, respondent and her then significant other were involved in a physical altercation. Respondent immediately moved out of her home and spent the next three months living with friends. Subsequent to March 2013, respondent decompensated and progressively lost the ability to manage her law practice. As a result, respondent failed to respond to clients, the courts, and the State Bar. In September 2016, respondent sought psychotherapy at the urging of close friends and was diagnosed with post-traumatic stress disorder and depression.

CONCLUSIONS OF LAW:

19. By failing to: (1) respond to the opposing party's discovery requests, (2) respond to the opposing party's motion to compel discovery, motion to impose sanctions, and motion to strike, (3) failing to initiate discovery, (4) failing to take any steps to further the client's lawsuit once it was filed, and (5) failing to take any steps to obtain compensation for the client after the lawsuit was filed, in *Robert Solla v. Quenta Givens*, Sacramento County Superior Court case number 34-2014-00167533, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

20. On August 1, 2014, Robert Solla hired respondent to perform legal services, and thereafter, respondent appeared as counsel of record for the client in *Robert Solla v. Quenta Givens*, Sacramento County Superior Court case number 34-2014-00167533. Respondent took no further action on behalf of the client after August 12, 2014, and effectively withdrew from the employment. At that time, respondent did not obtain the permission of the court to withdraw from the client's representation in the case before that court when the rules of the court required that she do so, and respondent withdrew from employment in a proceeding before a tribunal without its permission, in willful violation of the Rules of Professional Conduct, rule 3-700(A)(1).

21. Respondent failed to respond promptly to approximately 30 telephonic reasonable status inquiries made by respondent's client, Robert Solla, between in or about August 2014, and the end of October 2015, that respondent received, in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

22. By failing to inform respondent's client, Robert Solla, of the following: (1) that the opposing party served discovery on or about April 24, 2015, (2) that respondent was placed on inactive status on or about July 1, 2015, (3) that on or about September 30, 2015, the court scheduled a trial date in Mr. Solla's case, (4) that the opposing party filed a motion to compel discovery on or about October 14, 2015, (5) that respondent had not opposed the motion to compel, (6) that the court granted the motion to compel on or about November 13, 2015, (7) that the opposing party scheduled depositions for Robert Solla and Aurea Solla on December 4, 2015, (8) that the opposing party filed a motion to strike the complaint on December 8, 2015, (9) that on or about January 14, 2016, the court again ordered respondent to provide discovery, and (10) that respondent stopped pursuing the case after August 12, 2014, respondent failed to keep respondent's client reasonably informed of significant developments in a matter in which respondent agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

23. On September 8, 2015, and December 3, 2015, respondent held herself out as entitled to practice law, and on December 3, 2015, actually practiced law when respondent was not an active member of the State Bar, by representing her client, Robert Solla, during the course of telephone conversations with opposing counsel in *Robert Solla v. Quenta Givens*, Sacramento County Superior Court case number 34-2014-00167533, in violation Business and Professions Code sections 6125 and 6126, and thereby willfully violated Business and Professions Code section 6068(a).

24. On September 8, 2015, and December 3, 2015, respondent held herself out as entitled to practice law, and on December 3, 2015, actually practiced law, when respondent was grossly negligent in not knowing that respondent was not an active member of the State Bar by representing her client, Robert Solla, during the course of telephone conversations with opposing counsel in *Robert Solla v. Quenta Givens*, Sacramento County Superior Court case number 34-2014-00167533, and thereby committed acts involving moral turpitude, dishonesty, or corruption, in willful violation of Business and Professions Code section 6106.

25. Respondent failed to cooperate and participate in a disciplinary investigation pending against respondent by failing to respond to the State Bar's letters of August 20, 2015, September 4, 2015, and January 20, 2016, which respondent received, that requested respondent's response to the allegations of misconduct being investigated in case number 15-O-13786, in willful violation of Business and Professions Code section 6068(i).

Case No. 15-O-14055 (Complainant: Delva McFarland)

FACTS:

26. Delva McFarland ("McFarland") hired respondent in September 2014 to handle a personal injury case involving a car collision. McFarland signed a fee agreement and paid respondent \$150. According to the signed but undated fee agreement, McFarland agreed to pay respondent \$750 for initial representation services and an additional 25% of any recovery.

27. On September 8, 2014, respondent filed a civil complaint in *Delva McFarland v. Jose Garcia Alvarez*, Sacramento County Superior Court case number 14-2014-00168650 ("*McFarland v. Alvarez*").

28. After the civil complaint was filed, respondent stopped answering McFarland's phone calls. By October 2014, respondent stopped returning McFarland's voicemails. For a period of time thereafter, McFarland called respondent on a weekly basis but her attempts to reach respondent were

unsuccessful. Respondent has not contacted McFarland or performed any work in *McFarland v. Alvarez* since September 8, 2014.

29. Between November 6, 2014, and June 16, 2015, respondent received emails, letters, and a courtesy phone call from the State Bar regarding her Minimum Continuing Legal Education ("MCLE") requirements, including four communications that alerted respondent to her non-compliance. On or about July 10, 2015, respondent received mailed notice that her suspension went into effect on July 1, 2015.

30. Respondent did not inform McFarland that, between July 1, 2015 and January 31, 2016, respondent was placed on ineligible status due to MCLE non-compliance.

31. On August 27, 2015, and September 14, 2015, in State Bar case number 15-O-14055, the State Bar sent respondent letters advising her that McFarland was having difficulty reaching respondent and that McFarland had filed a State Bar complaint against her. The letters directed respondent to provide a written response to the allegations that respondent abandoned her client and failed to perform. Respondent received the State Bar's letters, which were sent to respondent's official State Bar membership records address, but never responded.

32. On May 31, 2016, McFarland's new attorney, Hector Gancedo ("Mr. Gancedo"), filed a Notice of Motion and Motion for Substitution of Attorney for Plaintiff and Declaration in Support in *McFarland v. Alvarez*. Mr. Gancedo filed the motion because he was unable to obtain a signed Substitution of Attorney form from respondent. Mr. Gancedo's declaration established that his numerous attempts to contact respondent were unsuccessful because respondent refused to answer her phone and her voicemail was full. Mr. Gancedo's efforts to email respondent were also futile.

33. On July 8, 2016, Mr. Gancedo was substituted in as Attorney of Record for McFarland when the Honorable Raymond Cadei granted Mr. Gancedo's Motion for Substitution of Attorney for Plaintiff in *McFarland v. Alvarez*.

34. Respondent's address as maintained on the State Bar's official membership record pursuant to Business and Professions Code section 6002.1 has remained the same since September 4, 2012.

35. In late March of 2013, and prior to respondent's misconduct, respondent and her then significant other were involved in a physical altercation. Respondent immediately moved out of her home and spent the next three months living with friends. Subsequent to March 2013, respondent decompensated and progressively lost the ability to manage her law practice. As a result, respondent failed to respond to clients, the courts, and the State Bar. In September 2016, respondent sought psychotherapy at the urging of close friends and was diagnosed with post-traumatic stress disorder and depression.

CONCLUSIONS OF LAW:

36. By failing to take any steps after September 8, 2014 to further Delva McFarland's civil case and failing to take any action to obtain compensation in *Delva McFarland v. Jose Garcia Alvarez*, Sacramento County Superior Court case number 14-2014-00168650, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct rule 3-110(A).

37. By failing to respond to Mr. Gancedo's telephone calls, voicemails, and emails requesting that respondent sign a Substitution of Attorney form in *Delva McFarland v. Jose Garcia Alvarez*, Sacramento County Superior Court case number 14-2014-00168650, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

38. In or about September 2014, Delva McFarland employed respondent to perform legal services, and thereafter, respondent appeared as counsel of record in *Delva McFarland v. Jose Garcia Alvarez*, Sacramento County Superior Court case number 14-2014-00168650. By taking no further action on behalf of McFarland after September 8, 2014, respondent effectively withdrew from the employment. At that time, respondent did not obtain the permission of the court to withdraw from McFarland's representation in the case when the rules of the court required that she do so, and respondent withdrew from employment in a proceeding before a tribunal without its permission, in willful violation of the rules of Professional Conduct, rule 3-700(A)(1).

39. Respondent failed to respond promptly to multiple weekly telephonic, reasonable status inquiries made by respondent's client, Delva McFarland, between September 2014 and May 2016, that respondent received in a matter which respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

40. By failing to inform respondent's client, Delva McFarland, that respondent stopped working on her case after September 8, 2014, and that respondent was placed on inactive status on July 1, 2015, respondent failed to keep her client reasonably informed of significant developments in a matter in which respondent agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

41. Respondent failed to cooperate and participate in a disciplinary investigation pending against respondent by failing to respond to the State Bar's letters of August 27, 2015 and September 14, 2015, which respondent received, that requested respondent's response to the allegations of misconduct being investigated in case number 15-O-14055, in willful violation of Business and Professions Code section 6068(i).

Case No. 16-O-10164 (Complainant: Nathaniel Saunders)

FACTS:

42. On or about March 3, 2013, Nathaniel Saunders ("Saunders") hired respondent to pursue an invasion of privacy claim against Progressive Insurance.

43. On April 11, 2013, Saunders wrote respondent a check in the amount of \$750 in exchange for respondent's legal services. The parties signed a written fee agreement. Saunders and respondent agreed not to file a civil suit right away because Saunders was involved in separate and pending litigation that could affect his claims against Progressive Insurance. Respondent told Saunders that once the pending litigation was fully resolved, she would file a complaint against Progressive Insurance alleging the privacy breach.

44. In January 2014, Saunders gave respondent permission to move forward with the Progressive lawsuit. On April 5, 2014, approximately one month prior to the expiration of the statute of limitations, respondent withdrew from the case. Respondent gave Saunders a draft complaint, which was

incomplete, and told him to find another lawyer. Saunders was unable to obtain a new lawyer and never filed in pro per.

45. On January 25, 2016, and March 9, 2016, the State Bar sent respondent letters requesting a written response to the allegations in State Bar case number 16-O-10164. Respondent received the State Bar's letters, which were sent to her State Bar official membership records address, but never responded.

46. Respondent's address as maintained on the State Bar's official membership record pursuant to Business and Professions Code section 6002.1 has remained the same since September 4, 2012.

47. In late March of 2013, and prior to respondent's misconduct, respondent and her then significant other were involved in a physical altercation. Respondent immediately moved out of her home and spent the next three months living with friends. Subsequent to March 2013, respondent decompensated and progressively lost the ability to manage her law practice. As a result, respondent failed to respond to clients, the courts, and the State Bar. In September 2016, respondent sought psychotherapy at the urging of close friends and was diagnosed with post-traumatic stress disorder and depression.

CONCLUSIONS OF LAW:

48. Respondent failed to cooperate and participate in a disciplinary investigation pending against respondent by failing to respond to the State Bar's letters of January 25, 2016 and March 9, 2016, which respondent received, that requested respondent's response to the allegations of misconduct being investigated in case number 16-O-10164, in willful violation of Business and Professions Code section 6068(i).

Case No. 15-O-14613 (Complainant: Thomas Zeff)

FACTS:

49. Between November 6, 2014, and June 16, 2015, respondent received emails, letters, and a courtesy phone call from the State Bar regarding her Minimum Continuing Legal Education ("MCLE") requirements, including four communications that alerted respondent to her non-compliance. On or about July 10, 2015, respondent received mailed notice confirming that her suspension went into effect on July 1, 2015.

50. Between July 1, 2015 and January 31, 2016, respondent was placed on ineligible status due to MCLE non-compliance.

51. Prior to May 22, 2015, respondent became legal counsel for defendant William Coker ("Mr. Coker") in *People v. William Coker*, Stanislaus County Superior Court case number 1468109.

52. On May 22, 2015, respondent telephoned Stanislaus County Deputy District Attorney Tanja Titre ("DDA Titre"), the prosecutor assigned to Mr. Coker's matter, and stated that she intended to withdraw as counsel of record.

53. On May 29, 2015, respondent made a court appearance in *People v. William Coker* and reiterated to DDA Titre that she intended to withdraw as Mr. Coker's attorney.

54. On June 17, 2015, respondent made a court appearance in *People v. William Coker* and asked the court for permission to withdraw as counsel of record. The hearing was continued so that respondent could serve Mr. Coker, who was incarcerated in a different county, with notice of the withdrawal.

55. On July 8, 2015, respondent made a court appearance in *People v. William Coker* and informed the court that she was still trying to withdraw as Mr. Coker's attorney but had not served her client with notice of the withdrawal. On that date, respondent filed a Notice of Motion to Withdraw as Attorney of Record. The hearing was continued to August 5, 2015, for further proceedings.

56. On August 5, 2015, respondent failed to appear at the hearing on her motion to withdraw. DDA Titre tried calling respondent's law office. On that same date, respondent sent the assigned judge, the Honorable Thomas Zeff ("Judge Zeff"), an email apologizing for her absence in court that morning. Respondent stated that her transportation was unreliable but had she appeared in court, she would have advised Judge Zeff that her client, Mr. Coker, wanted to keep respondent as counsel. Respondent indicated that she was engaged in plea negotiations to resolve Mr. Coker's matter and asked that his case be placed on calendar for a status conference on August 28, 2015. Respondent also stated that she intended to submit an Application to Transfer Prisoner and a proposed Order for Transfer, and that the judicial clerk would receive the documents the following day. The court rescheduled the case for a hearing on August 13, 2015.

57. On August 13, 2015, respondent failed to appear in court on her own motion to withdraw. The Application to Transfer Prisoner and proposed Order for Transfer were never submitted on Mr. Coker's behalf.

58. On August 18, 2015, Judge Zeff issued and filed an Order to Show Cause ("OSC") alleging that respondent failed to appear on August 13, 2015, in *People v. William Coker*, Stanislaus County Superior Court case number 1468109. The OSC ordered respondent to appear on September 10, 2015, to address the allegation.

59. On September 10, 2015, respondent failed to appear at the OSC hearing. On this date, the court learned that respondent was suspended from the practice of law and a public defender was appointed to represent Mr. Coker.

60. On September 30, 2015, and October 19, 2015, the State Bar sent respondent letters requesting a written response to the allegations in State Bar case number 15-O-14613, which were sent to respondent's official State Bar membership records address and respondent actually received. Respondent never responded to the State Bar's letters.

61. Respondent's address as maintained on the State Bar's official membership record pursuant to Business and Professions Code section 6002.1 has remained the same since September 4, 2012.

62. In late March of 2013, and prior to respondent's misconduct, respondent and her then significant other were involved in a physical altercation. Respondent immediately moved out of her home and spent the next three months living with friends. Subsequent to March 2013, respondent decompensated and progressively lost the ability to manage her law practice. As a result, respondent failed to respond to clients, the courts, and the State Bar. In September 2016, respondent sought psychotherapy at the urging of close friends and was diagnosed with post-traumatic stress disorder and depression.

CONCLUSIONS OF LAW:

63. Respondent both held herself out as entitled to practice law and actually practiced law when respondent was not an active member of the State Bar during the course of representing the defendant in a criminal case entitled *People v. William Coker*, Stanislaus County Superior Court case number 1468109, by: (1) appearing in court and filing a Notice of Motion to Withdraw as Attorney of Record on July 8, 2015, and (2) sending a letter to the court concerning matters at issue in the criminal case on August 5, 2015, all in willful violation of Business and Professions Code sections 6125 and 6126, and thereby in willful violation of Business and Professions Code section 6068(a).

64. Respondent both held herself out as entitled to practice law and actually practiced law when respondent was grossly negligent in not knowing that respondent was not an active member of the State Bar during the course of a criminal case entitled *People v. William Coker*, Stanislaus County Superior Court case number 1468109, by: (1) appearing in court and filing a Notice of Motion to Withdraw as Attorney of Record on July 8, 2015, and (2) sending a letter to the court concerning matters at issue in the criminal case on August 5, 2015, and thereby committed acts involving moral turpitude, dishonesty, or corruption in willful violation of Business and Professions Code section 6106.

65. Prior to May 22, 2015, William Coker employed respondent to perform legal services, and thereafter, respondent appeared as counsel of record for the client in *People v. William Coker*, Stanislaus County Superior Court case number 1468109. After August 5, 2015, respondent took no further action on behalf of the client and effectively withdrew from the employment. At that time, respondent did not obtain the permission of the court to withdraw from the client's representation in the case before that court when the rules of the court required that she do so, and respondent withdrew from employment in a proceeding before a tribunal without its permission, in willful violation of the Rules of Professional Conduct, rule 3-700(A)(1).

66. 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 by failing to comply with the order filed on August 18, 2015, in *People v. William Coker*, Stanislaus County Superior Court case number 1468109, requiring respondent to personally appear in court on September 10, 2015, to show cause why she should not be sanctioned for her failure to appear in court on August 13, 2015, in willful violation of Business and Professions Code section 6103.

67. Respondent failed to cooperate and participate in a disciplinary investigation pending against respondent by failing to respond to the State Bar's letters of September 30, 2015, and October 19, 2015, which respondent received, that requested respondent's response to the allegations of misconduct being investigated in State Bar case number 15-O-14613, in willful violation of Business and Professions Code section 6068(i).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent committed twenty acts of misconduct in four client matters, including client abandonment and the unauthorized practice of law. Respondent ignored her clients' numerous and repeated status inquiries, and wilfully blinded herself to the State Bar's investigation into her misconduct.

MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: Respondent practiced law for approximately 29 years without prior discipline. Respondent's many years in practice with no prior discipline is entitled to significant weight in mitigation. (See *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar. Ct. Rptr. 41 [attorney's many years in practice with no prior discipline considered mitigating even when misconduct at issue was serious]; *Friedman v. State Bar* (1990) 50 Cal.3d 235, 242 [20 years in the practice of law without discipline is afforded significant weight in mitigation].)

Pretrial 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].)

Family Difficulties: Respondent submitted a declaration and character letters attesting that respondent's misconduct resulted from the effects of an abusive home life and subsequent mental health crisis. In late March of 2013, respondent and her then significant other were involved in a physical altercation. Respondent immediately moved out of her home and spent the next three months living with friends. In September 2016, respondent sought psychotherapy at the urging of close friends and was diagnosed with post-traumatic stress disorder and depression. The psychologist opined that respondent was unable to perform the functions of her employment or care for herself. The psychologist recommended that respondent seek medical assistance for her health, including psychotropic medication. (See *In the Matter of Deireling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, 560-561 [despite the absence of complete rehabilitation, mitigation for emotional difficulties was afforded to attorney who demonstrated steady progress towards rehabilitation].)

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 Silverton* (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 committed twenty 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."

The most severe sanction applicable to respondent's misconduct is found in standard 2.11, which applies to respondent's violation of Business and Professions Code section 6106.

Standard 2.11 provides that:

Disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law.

Analyzed under the standards, respondent should be actually suspended from the practice of law for a period of 90 days. Respondent's misconduct was significant in magnitude and was related to the practice of law. Respondent's actions affected four clients, delayed one criminal prosecution and two civil proceedings, and showed a lack of regard for atonement and rectification. Although no clients were seriously harmed, respondent's abdication of her responsibilities resulted in three clients contacting the State Bar because respondent stopped returning their calls. When clients tried to obtain new counsel to preserve their cases, respondent failed to sign substitution of attorney forms in a timely manner.

An actual suspension of 90 days furthers the primary purposes of discipline, i.e., protection of the public, maintenance of the highest professional standards, and preservation of public confidence in the legal profession. This level of discipline also takes into consideration the aggravating and mitigating factors in respondent's matter. While respondent's matter is aggravated by her multiple acts of misconduct, respondent is entitled to significant mitigation for her many years in practice without prior discipline and some mitigation for family difficulties. Respondent is also afforded mitigation for entering into a pre-trial stipulation, which demonstrated a recognition of wrongdoing and also saved the State Bar significant resources. On balance, respondent's factors in mitigation outweigh the sole factor in aggravation. In addition, respondent's family difficulties appear to explain the nature and duration of her misconduct. Respondent practiced law for approximately 29 years without prior discipline, which lends support to the proposition that respondent's decline in family circumstances contributed to her misconduct.

An actual suspension of 90 days' is also consistent with case law involving performance issues and the unlicensed practice of law.

In *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459, the attorney was hired by an incarcerated client to handle an appeal. The attorney failed to respond to reasonable status inquiries, failed to provide competent legal services, lied about the status of the appeal, failed to return the client file, and failed to return unearned advanced fees. (*Id.* at p. 463.) In aggravation, the attorney committed multiple acts of misconduct over a significant period and significantly harmed a client. (*Id.*) The attorney's mitigation was given little weight. (*Id.*) The Review Department recommended that the attorney be suspended from the practice of law for two years, stayed, on the condition that he be actually suspended for six months. In support of its recommendation, the Review Department noted, "Decisions of the Supreme Court and our court involving abandonment of a client's case with no prior record of the attorney's misconduct have typically resulted in discipline ranging from no actual suspension to 90 days of actual suspension." (*Id.* at p. 465-466.)

In *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, the court imposed a 60-day actual suspension for an attorney who held himself out as entitled to practice law in a single instance while suspended for non-payment of membership fees. In addition, the attorney repeatedly failed to communicate with a client and lied to her about the services he had performed on her behalf and the status of her case, which had been dismissed due to his failure to timely serve the complaint. (*Id.* at p. 589.) When the State Bar commenced its investigation, the attorney did not respond to the investigator's two letters. (*Id.*) The court found as an aggravating factor significant harm to the client, who lost her cause of action due to the attorney's reckless incompetence. (*Id.*) The court also found additional aggravation because the attorney did not appear at his disciplinary proceeding, resulting in his default. (*Id.*) The court also considered the attorney's 12 years without prior discipline to be an "important" mitigating factor. (*Id.*)

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>
15-O-13786	Three	Rules of Professional Conduct, rule 3-700(A)(2)
15-O-14055	Eleven	Rules of Professional Conduct, rule 3-700(A)(2)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of June 6, 2017, the discipline costs in this matter are \$8,819. 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.

MENTAL HEALTH CONDITIONS.

Respondent, at respondent's expense, shall obtain psychiatric or psychological treatment from a duly licensed psychiatrist, clinical psychologist or clinical social worker, no less than two (2) times per month. Respondent shall commence treatment within forty five (45) days of the execution date of this agreement. Respondent shall furnish to the Office of Probation Unit, State Bar of California, at the time quarterly reports are required to be filed by the respondent with the Office of Probation, a written

statement from the treating psychiatrist, clinical psychologist or clinical social worker, that respondent is complying with this condition.

Upon a determination by the treating psychiatrist, clinical psychologist or clinical social worker that respondent is no longer in need of treatment two (2) times per month, respondent shall provide, to the Office of Probation, State Bar of California, a written statement from the treating psychiatrist, clinical psychologist or clinical social worker verifying the change in number of treatment sessions per month. Upon acceptance by the Office of Probation, State Bar of California, the reduction in treatment will be permitted.

Respondent shall execute and provide the Office of Probation, State Bar of California, upon its request, with any medical waivers which shall provide access to respondent's medical records relevant to verifying respondent's compliance with this condition of probation; failure to provide and/or revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation, State Bar of California, under this paragraph, shall be confidential and shall not be disclosed except to personnel of the Office of Probation, State Bar of California, and the State Bar Court, who are involved in maintaining and/or enforcing the terms and conditions of this agreement.

FEE ARBITRATION CONDITIONS.

A. Respondent's Duty to Initiate and Participate in Fee Arbitration

Respondent must initiate fee arbitration with the State Bar of California's Mandatory Fee Arbitration Program within thirty (30) days from the effective date of this matter, including making any payment(s) and filing fees required to start the process. The fee arbitration will be for the \$3,666.66 in fees that Robert Solla paid respondent in two installments of \$1,833.33 on August 1, 2014, and October 13, 2014. Respondent must not request more fees than have already been paid by, or on behalf of, Robert Solla.

Respondent must provide the Office of Probation with a copy of the conformed filing within forty-five (45) days from the effective date of this matter. Respondent must immediately provide the Office of Probation with any information requested regarding the fee arbitration to verify Respondent's compliance.

Respondent must fully and promptly participate in the fee arbitration as directed by the State Bar Mandatory Fee Arbitration Program. Respondent will not be permitted to raise the statute of limitations as a defense to the fee arbitration. Respondent understands and agrees that the Office of Probation may contact the Mandatory Fee Arbitration Program for information.

Respondent must accept binding arbitration on the arbitration request form. If the arbitration proceeds as non-binding, however, respondent must abide by the arbitration award and forego the right to file an action seeking a trial de novo in court to vacate the award.

B. Respondent's Duty to Comply with the Arbitration Award

Within fifteen (15) days after issuance of any arbitration award or judgment or agreement reflected in a stipulated award issued pursuant to a fee arbitration matter, respondent must provide a copy of said award, judgment or stipulated award to the Office of Probation.

Respondent must abide by any award, judgment or stipulated award of any such fee arbitrator and agrees to provide proof thereof to the Office of Probation within thirty (30) days after compliance with any such award, judgment or stipulated award. If the award, judgment or stipulated award does not set forth

a deadline for any payment, respondent is to make full payment within thirty (30) days of the issuance of any such award, judgment or stipulated award. Respondent must provide proof thereof to the Office of Probation within thirty (30) days after payment.

To the extent that respondent has paid any fee arbitration award, judgment or stipulated award prior to the effective date of this matter, respondent will be given credit for such payment(s) provided satisfactory proof of such payment(s) is or has been provided to the Office of Probation.

C. Fee Arbitration Conditions can be Satisfied by Respondent's Full Payment to Robert Solla

The Fee Arbitration Conditions can also be satisfied by respondent's full payment of \$3,666.66 in fees that Robert Solla paid respondent in two installments of \$1,833.33 on August 1, 2014, and October 13, 2014, plus interest of 10% per annum on each installment payment from the date each installment was paid, within thirty (30) days from the effective date of this matter. Satisfactory proof of payment must be received by the Office of Probation within forty-five (45) days from the effective date of this matter.

If the Client Security Fund ("CSF") has reimbursed Robert Solla for all or any portion of the principal amount(s), respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs. To the extent the CSF has paid only principal amounts, respondent will still be liable for interest payments to Robert Solla. Any restitution to the CSF is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d). Respondent must pay all restitution to Robert Solla before making payment to CSF. Satisfactory proof of payment(s) to CSF must be received by the Office of Probation within thirty (30) days of any payment.

D. Effect of Respondent's Failure to Comply with Fee Arbitration Conditions

Respondent understands that failure to strictly comply with these conditions regarding fee arbitration may result in this Court imposing additional discipline (with attendant costs) and conditions upon respondent, including ordering respondent to pay back the full amount of \$3,666.66 that Robert Solla paid to respondent in two installments of \$1,833.33 on August 1, 2014, and October 13, 2014, plus interest of 10% per annum on each installment payment from the date each installment was paid.

EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT.

Pursuant to rule 3201, respondent may not receive MCLE credit for completion of ethics courses ordered as a condition of her probation. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: DAPHNE LORI MACKLIN	Case number(s): 15-O-13786-LMA, 15-O-14055, 15-O-14613, 16-O-10164
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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>6/23/2017</u>	<u><i>D. Macklin</i></u>	Daphne Macklin
Date	Respondent's Signature	Print Name
<u>6/20/17</u>	<u><i>[Signature]</i></u>	Megan Zavieh
Date	Respondent's Counsel Signature	Print Name
<u>6/21/17</u>	<u><i>Laura A. Huggins</i></u>	Laura Huggins
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: DAPHNE LORI MACKLIN	Case Number(s): 15-O-13786-LMA, 15-O-14055, 15-O-14613, 16-O-10164
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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

July 11, 2017


PAT E. MCELROY
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 San Francisco, on July 11, 2017, I deposited a true copy of the following document(s):

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

in a sealed envelope for collection and mailing on that date as follows:

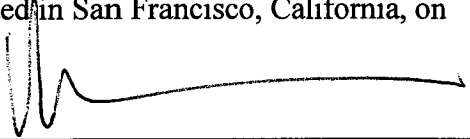
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

MEGAN E. ZAVIEH
12460 CRABAPPLE RD STE 202-272
ALPHARETTA, GA 30004

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

Laura A. Huggins, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 11, 2017.



Vincent Au
Case Administrator
State Bar Court