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

<p>Counsel for the State Bar</p> <p><b>Danielle Adoración Lee</b> 180 Howard Street San Francisco, CA 94105 (415) 538-2218</p> <p>Bar # 223675</p>	<p>Case Number(s): <b>16-C-13277-YDR</b></p>	<p>For Court use only</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b> ✓ <b>MAR 05 2019</b></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p><b>Vicki H. Young</b> Law Offices of Vicki H. Young 2211 Park Boulevard Palo Alto, CA 94306 Telephone: (650) 289-0635 Fax: (650) 289-0636</p> <p>Bar # 73261</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: <b>ROBERT ALAN MACHADO</b></p> <p>Bar # 88836</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 29, 1979**.
- (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."



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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. It is recommended that (check one option only):
- Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.
  - Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. SELECT ONE of the costs must be paid with Respondent's membership fees for each of the following years:  
  
If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs."
  - Costs are entirely waived.

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

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

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- (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. **The \$325,000 restitution that respondent had to pay as a condition of his criminal probation shows that respondent caused significant harm to a client. See page 20.**
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10)  **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11)  **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

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

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

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

**Additional mitigating circumstances:**

Pretrial Stipulation, see page 20.  
No prior record of discipline, see page 20.  
Good character, see page 20.

**D. Recommended Discipline:**

(1)  **Actual Suspension:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for the first \_\_\_\_\_ of the period of Respondent's probation.

(2)  **Actual Suspension "And Until" Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation and until Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(3)  **Actual Suspension "And Until" Restitution (Single Payee) and Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.



- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent’s probation, and Respondent will remain suspended until both of the following requirements are satisfied:
  - a. Respondent makes restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar’s Office of Probation in Los Angeles; and
  - b. Respondent provides proof to the State Bar Court of Respondent’s rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(4)  **Actual Suspension “And Until” Restitution (Multiple Payees) and Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

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

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

- b. Respondent provides proof to the State Bar Court of Respondent’s rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

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

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

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

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

- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

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

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

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

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

- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

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

Respondent is suspended from the practice of law for **three years**, the execution of that suspension is stayed, and Respondent is placed on probation for **four years** with the following conditions.

- Respondent is suspended from the practice of law for the first **two years** of probation (with credit given for the period of interim suspension which commenced on **April 11, 2018**).

**E. Additional Conditions of Probation:**

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

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

- (2)  **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3)  **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.
- (4)  **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5)  **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6)  **Quarterly and Final Reports:**
  - a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.
  - b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
  - c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

**d. Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

- (7)  **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (8)  **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because
- (9)  **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (10)  **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete \_\_\_\_\_ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (11)  **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.
- (12)  **Minimum Continuing Legal Education (MCLE):** Within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete \_\_\_\_\_ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in SELECT ONE \_\_\_\_\_ and must

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provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.

- (13)  **Other:** Respondent must also comply with the following additional conditions of probation: **Respondent must provide proof to the State Bar Court of respondent's rehabilitation, fitness to practice, and present learning and ability in the general law (Rules Proc. of State BAR, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1)).**
- (14)  **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (15)  **The following conditions are attached hereto and incorporated:**
- Financial Conditions  Medical Conditions
- Substance Abuse Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

#### **F. Other Requirements Negotiated by the Parties (Not Probation Conditions):**

- (1)  **Multistate Professional Responsibility Examination Within One Year or During Period of Actual Suspension:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Respondent's actual suspension, whichever is longer, and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2)  **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because .
- (3)  **California Rules of Court, Rule 9.20:** Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (4)  **California Rules of Court, Rule 9.20 – Conditional Requirement:** If Respondent remains suspended for 90 days or longer, Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (5)  **California Rules of Court, Rule 9.20, Requirement Not Recommended:** It is not recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, because
- (6)  **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:



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

IN THE MATTER OF:                                    ROBERT ALAN MACHADO

CASE NUMBERS:                                    16-C-13277-YDR

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offenses for which he was convicted involve moral turpitude.

**Case No. 16-C-13277-YDR (Conviction Proceeding)**

1.        This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

2.        On May 2, 2016, in Santa Clara Superior Court, case no. C1636368, a criminal complaint was filed against disbarred attorney, Michael T. Morrissey (State Bar number 62195), Tracey McCarroll, Morrissey's wife, and respondent. Respondent was originally charged jointly with McCarroll and Morrissey for felony violations of Business and Professions Code section 6126(b) for the unauthorized practice of law, Penal Code section 182(a)(1), conspiracy to commit the unauthorized practice of law, and Penal Code section 529, false personation.

3.        By form postmarked June 10, 2016, respondent late reported to the State Bar the filing of the felony complaint against him, stating that he had been charged with violations of Business and Professions Code sections 6126(b), and Penal Code sections 182(a)(1) [conspiracy] and 529 [false personation].

4.        On September 13, 2017, the Third Amended Felony Complaint was filed charging Morrissey in Count 1 with felony violation of Business and Professions Code section 6126(b) by holding himself out between March 24, 2012, and April 24, 2014, as entitled to practice, attempting to and practicing law in the following cases:

*T. Ireland v. A. McCarthy, et al.*, Santa Clara County, Case No. 2009-1-CV-152874;

*T. Ireland v. S. Schneider*, Santa Clara County, Case No. 2010-1-CV-163273;

*T. Ireland v. Rankin, Landsness, Lahde, Serverian & Stock, et al.*, Santa Clara County, Case No. 2012-1-CV-229462;

*ZF Micro Solutions, Inc. et al., v. Greenfield et al.*, Santa Clara County, Case No. 2013-1-CV-241111, Sixth District Court of Appeal, Case No. H040774;

*TAT Capital Partners, Ltd. et al., v. Feldman, et al.*, Santa Clara County, Case No. 2013-1-CV035531, Sixth District Court of Appeal, Case No. H040790; and

*ZF Micro Solutions, Inc. et al., v. Greenfield et al./Terry W. Ireland et al., v. Gordon & Rees LLP et al./ZF Micro Solutions Inc. et al., v. Gordon & Rees LLP et al.*; San Francisco County Case Nos. CGC-12-524546/CGC-12-524815 [consolidated].

5. The Third Amended Felony Complaint in Count 2 charged respondent with a *misdemeanor* violation of Penal Code section 32 [“Every person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony”], for harboring, concealing, and aiding “after the felony [Bus. & Prof. Code, § 6126(b)] had been committed, and with the knowledge that [Morrissey] had committed the unauthorized practice of law . . .” in the following cases:

*T. Ireland v. A. McCarthy, et al.*, Santa Clara County, Case No. 2009-1-CV-152874;

*T. Ireland v. S. Schneider*, Santa Clara County, Case No. 2010-1-CV-163273;

*Ireland v. Rankin, Landsness, Lahde, Serverian & Stock, et al.*, Santa Clara County, Case No. 2012-1-CV-229462;

*ZF Micro Solutions, Inc. et al., v. Greenfield et al.*, Santa Clara County, Case No. 2013-1-CV-241111, Six District Court of Appeal, Case No. H040774; and

*TAT Capital Partners, Ltd. et al., v. Feldman, et al.*, Santa Clara County, Case No. 2013-1-CV-035531, Six District Court of Appeal, Case No. H040790;

with the intent that Morrissey might avoid and escape arrest, trial, conviction and punishment.

6. On September 13, 2017, respondent pled *nolo contendere* to one count of misdemeanor Penal Code section 32, accessory to Morrissey’s felony violation of Business and Professions Code section 6126(b).

7. At the change of plea hearing on September 13, 2017, respondent’s criminal defense counsel stated on the record that on or about March 24, 2012, through April 24, 2014, respondent:

- a. stated that he would represent the plaintiffs in their cases enumerated in Count 2 of the Third Amended Complaint in their pending litigation while Morrissey was suspended from the California State Bar until such time as Morrissey was reinstated;
- b. never became attorney of record in those cases, and allowed Morrissey and McCarroll to inauthentically sign his name to all pleadings and declarations and made no effort to supervise Morrissey with regard to the pending litigation while Morrissey was suspended by the California State Bar nor during the time after Morrissey’s disbarment;
- c. allowed himself to be identified as counsel of record by Morrissey in numerous lawsuits and appeals related to David Feldman, Marsha Armstrong, Terrance Ireland, ZF Micro Solutions, and other shareholders who were plaintiffs in those cases;
- d. made statements to David Feldman assuring him that all of the cases were “proceeding normal”; and
- e. failed to review any of his declarations before their filing prior to November 2, 2014, which bore his inauthentic signature.

8. The District Attorney stipulated to the factual basis recited into the record by respondent’s criminal defense attorney and the court found a factual basis for respondent’s plea, and suspended imposition of sentence, imposed one day in county jail with credit for time served on respondent along with minimum fees and costs of \$235, and placed respondent on three years’ probation, and ordered respondent to pay \$325,000



held in his blocked Wells Fargo account toward total \$450,000 restitution to Perry W. Ireland, the remaining \$125,000 of which Morrissey was ordered to pay.

9. Respondent's criminal defense counsel stated as a stipulation on the record that the criminal restitution "preserves the victims', successors' and assigns' [sic] rights to be made whole in civil court should they wish to proceed in that forum apart from this case."

10. On October 12, 2017, the State Bar transmitted records of respondent's conviction characterizing Penal Code section 32 as a crime involving moral turpitude citing *In re Young* (1989) 49 Cal.3d 257.

11. On November 1, 2017, the Review Department issued an order stating that respondent had been convicted of violating Penal Code section 32, accessory to the unauthorized practice of law in violation of Business and Professions Code section 6126, and declining to place respondent on interim suspension pending finality of the conviction on the basis that a violation of Business and Professions Code section 6126 is a crime that may or may not involve moral turpitude.

12. On January 17, 2018, the State Bar transmitted evidence of finality of respondent's conviction.

13. On February 8, 2018, the Review Department issued an order placing respondent on interim suspension effective March 12, 2018, characterizing Penal Code section 32 as a crime involving moral turpitude *per se*, citing *In re Young* (1989) 49 Cal.3d 257, and referring this case to the Hearing Department for a hearing and decision recommending the discipline to be imposed.

14. On February 23, 2018, respondent filed a motion to stay the effective date of his interim suspension.

15. On March 7, 2018, the State Bar filed an opposition to respondent's motion to delay the effective date of his interim suspension.

16. On March 8, 2018, the Review Department issued an order extending the effective date of respondent's interim suspension until April 11, 2018.

#### FACTS:

#### BACKGROUND FACTS REGARDING RESPONDENT'S RELATIONSHIP WITH MORRISSEY:

17. Respondent is an active probate attorney with no litigation experience.

18. For many years, respondent had been giving Tracy McCarroll, Morrissey's wife ("McCarroll") and her family financial assistance in the form of, *inter alia*, payment of health insurance premiums, car payments, car insurance premiums, phone and water bills, food, and college tuition for McCarroll's daughter. In turn, McCarroll had been trading off work for respondent as an unlicensed paralegal, clerk, and secretary for respondent although McCarroll's work for respondent was not sufficient to repay respondent for all of his financial assistance.

19. McCarroll, in her role as paralegal and clerk, had access to the Machado and Machado Law Firm's office and letterhead. Her husband, Morrissey, was not a member of the Machado Law Firm but did occupy office space at the Machado and Machado Law Firm's office located at 1110 N. 1<sup>st</sup> St., San Jose, CA from 2000 to 2012. McCarroll, however, largely worked from home due to an ill family member.

20. From time to time, respondent would authorize McCarroll to sign respondent's name to some documents, but only after respondent had reviewed the documents and authorized it.

21. Morrissey had a history of having respondent, his friend, substitute in as co-counsel during Morrissey's periods of suspension.

22. McCarroll had also worked as Morrissey's paralegal, and when respondent took over Morrissey's cases, McCarroll worked with respondent on those same cases.

#### BACKGROUND FACTS REGARDING ZF ENTITIES:

23. In 1995, David Feldman ("Feldman") created and owned ZF Micro Devices, which manufactured microchips. ZF Micro Devices had a contract for production with National Semiconductor ("NSC").

24. TAT Capital Partners Ltd. ("TAT") and Sands Venture Capital L.L.C. ("Sands") were major investors in ZF Micro Devices. Sands' representative on the ZF Micro Devices board of directors was Gary Kennedy ("Kennedy").

25. On February 28, 2002, Kennedy—who had provided a \$1 million secured bridge loan to ZF Micro Devices in 2001 on which the company defaulted—foreclosed on the assets of ZF Micro Devices. This marked the end of ZF Micro Devices' operations.

26. At or about the same time, Feldman formed ZF Micro Solutions for the purpose of acquiring ZF Micro Devices' assets. Feldman and his sister, Marsha Armstrong, lent ZF Micro Solutions approximately \$400,000 for it to acquire the ZF Micro Devices assets from Kennedy, that Kennedy had obtained by foreclosing on his loan. Included among the assets ZF Micro Solutions acquired, was ZF Micro Devices' microchip production agreement with NSC.

27. In 2002, ZF Micro Solutions sued NSC for damages. The lawsuit was based upon claims that, among other things, NSC failed to produce ZF Micro Devices' microchips as agreed under their contract

28. In 2004, Feldman contacted ZF Micro Devices investors telling them that he had bought "certain of the assets" of ZF Micro Devices and "recast the company" as ZF Micro Solutions. He told them that ZF Micro Solutions needed more investment to continue the lawsuit against NSC. Feldman offered them "Series B" stock promising 10x return. Some of the shareholders accepted this offer and provided more money.

29. While the case was ongoing, NSC contended that ZF Micro Solutions had no standing to assert claims against NSC because those claims belonged to the shareholders of ZF Micro Devices. In responding to this contention, Feldman produced a document entitled "Assignment of Assets," purporting to assign ZF Micro Devices' intellectual property, including any claims against NSC, from ZF Micro Devices to ZF Micro Solutions. The document bore no date of signature but reflected March 1, 2002, as its effective date. NSC challenged the legal effectiveness of the assignment.

30. In April 2004—while the NSC lawsuit was still pending and the issue of ZF Micro Solutions' standing was still outstanding—Feldman solicited and obtained TAT's and Sands' execution of an April 2004 "Consent Agreement" ratifying the transfer of ZF Micro Devices assets, including ZF Micro Devices' legal rights against NSC, to ZF Micro Solutions.

31. On December 14, 2004, ZF Micro Solutions won a \$20 million settlement against NSC.

32. On February 1, 2005, Feldman received payment on behalf of ZF Micro Solutions.

33. On February 14, 2005, ZF Micro Solutions was sued by TAT and Sands, who contended that, as ZF Devices shareholders, they were entitled to receive pro rata distributions of the proceeds of the \$20 million

settlement of the NSC lawsuit. TAT and Sands claimed that, in exchange for signing the Consent Agreement, they were promised that, as ZF Micro Devices shareholders, they would receive pro-rata distributions of any recovery obtained in the NSC lawsuit. TAT and Sands alleged that ZF Micro Solutions breached the Consent Agreement by distributing all net NSC lawsuit settlement proceeds to itself and to the ZF Micro Solutions' shareholders. TAT and Sands alleged further that the disposition of the settlement proceeds constituted a fraudulent transfer of assets. Several additional lawsuits ensued thereafter.

34. In June 2011, William Ireland, a ZF Micro Solutions shareholder, hired Morrissey to represent him in an unrelated matter, *T. Ireland v. A. McCarthy, et al.*, Santa Clara County, Case No. 2009-1-CV-152874. Morrissey was an active attorney at that time.

35. In November 2011, Ireland recommended Morrissey as a skilled litigator to Feldman.

36. On March 5, 2012, Morrissey emailed Feldman and offered his opinion on the ZF Micro Solutions cases. In the email, Morrissey said that he would handle everything for \$375,000.00 +25% of the recovery on the malpractice case and cross-complaint case. Morrissey asked for the \$375,000.00 upfront and when the case was reversed another \$125,000.00.

37. Shortly thereafter, Feldman hired Morrissey to handle the following lawsuits involving ZF Micro Solutions:

- a. *TAT Capital Partners, Ltd. et al., v. Feldman, et al.*, Santa Clara County, Case No. 2013-1-CV-035531, Sixth District Court of Appeal, Case No. H040790;
- b. *ZF Micro Devices Inc., et al v. TAT Investment Advisory, Ltd., et al.*, Santa Clara County, Case No. 1-09-CV-134970;
- c. *ZF Micro Solutions, Inc. et al., v. Greenfield, et al.*, Santa Clara County, Case No. 2013-1-CV-241111, Sixth District Court of Appeal, Case No. H040774;
- d. *Terry William Ireland, et al., v. Gordon & Rees LLP, et al.*, San Francisco County, Case No. CGC-12-524546; and
- e. *ZF Micro Solutions, Inc. et al., v. Gordon & Rees LLP, et al.*, San Francisco County, Case No. CGC-12-524815.

38. There were multiple ZF Micro Solutions shareholders that were plaintiffs/defendant in the various lawsuits, many of whom were elderly, not computer savvy, and didn't use email. Feldman was designated and acted as the main point of contact between the other shareholders and Morrissey, McCarroll and respondent.

#### FACTS UNDERLYING THE CONVICTION:

39. On March 24, 2012, Morrissey was ordered inactive.

40. On March 27, 2012, Feldman received a phone call from Morrissey to discuss the ZF cross-complaint and other matters. Morrissey told Feldman that Morrissey's license had been suspended, effective March 24, 2012, but it was only temporary, and that respondent would take over all of the ZF Micro Solutions cases until the "clerical" issue with Morrissey's license was resolved with the State Bar. Morrissey informed Feldman that respondent would substitute into the ZF Micro Solutions cases.

41. Feldman procured signatures from the other shareholder plaintiffs on substitutions of counsel replacing Morrissey with respondent. There were signatures on these substitutions of counsel purporting to be respondent's signature. Respondent did not sign the substitutions of counsel, and did not review them before they were filed.

42. McCarroll, who had been acting as Morrissey's paralegal on the ZF Micro Solutions cases, continued her paralegal work on those cases after respondent became counsel of record.

43. In order to work on the ZF Micro Solutions cases with respondent, McCarroll set up another email address in addition to the email address that respondent used, machado.law.offices.1@gmail.com. (Respondent used machado.law.offices@gmail.com), McCarroll requested opposing counsel to copy her on all correspondence to respondent, and opposing counsel complied. McCarroll was far more vigilant at handling the incoming email than respondent was.

44. McCarroll routinely identified herself as respondent's paralegal in email correspondence with opposing counsel and worked on discovery in the ZF Micro Solutions cases.

45. As part of her work on the ZF Micro Solutions cases, McCarroll set up Court Call for respondent and paid the set-up fee with either her own credit card or with respondent's credit card.

46. On September 21, 2012, a complaint was filed in San Francisco County Superior Court, *Ireland et al., v. Gordon & Rees LLP, et al.*, Case No. CGC-12-524546. The complaint listed respondent as counsel of record for plaintiffs, and bore a signature that purported to be respondent's signature. Respondent did not write or sign the complaint, and did not review it before it was filed.

47. On September 28, 2012, a complaint was filed in San Francisco County Superior Court, *ZF Micro Solutions, Inc., et al. v. Gordon & Rees LLP, et al.*, Case No. CGC-12-524815. The complaint listed respondent as counsel of record for plaintiffs, and bore a signature that purported to be respondent's signature. Respondent did not write or sign the complaint, and did not review it before it was filed.

48. On March 28, 2013, McCarroll emailed Feldman and Morrissey and stated, "I told the guys for the 10<sup>th</sup> time, not to send correspondence or pleadings without letting me review and correct it. Documents typed by [respondent] or [Morrissey] always need corrections."

49. On May 14, 2013, a stipulation to extend certain defendants' time to respond to the complaint was filed in San Francisco County Superior Court, Case No. CGC-12-524546, *Ireland et al., v. Gordon & Rees LLP, et al.* The stipulation listed respondent as counsel of record for plaintiffs, and bore a signature that purported to be respondent's signature. Respondent did not write or sign the stipulation, and did not review it before it was filed.

50. On June 18, 2013, Feldman met respondent at Santa Clara County Superior Court on case *ZF v. TAT Capital Partner, Ltd.*, Case No. 1-09-CV-134970. Feldman thanked respondent for assuming Morrissey's cases and asked if he and the other plaintiffs needed to sign an engagement agreement. Respondent said that no agreement was necessary, as he and Morrissey had an agreement between them. Respondent said that he was happy if Morrissey continued to be paid, as he and Morrissey would work out splitting the eventual malpractice contingency. During this conversation, respondent commented to Feldman about attorney Susan Handelman who worked for Ropers, Majeski, Kohn & Bentley concerning work Handelman had done on San Francisco case CGC-12-524546. Respondent noted that Handelman had failed to note in her appeal that TAT Investment Advisory was not registered to do business in California. Respondent's comments reassured Feldman that respondent, who was new to the case, had done his due diligence in getting himself up to speed on the cases he inherited from Morrissey, which included the San Francisco cases.

51. Morrissey never regained active status and was disbarred effective June 14, 2013.

52. On July 24, 2013, Morrissey appeared by Court-Call in *ZF Micro Solutions, Inc., et al. v. Gordon & Rees LLP, et al.*, San Francisco County Superior Court, Case No. CGC-12-524815, on behalf of Plaintiffs/Cross-Defendants. Morrissey represented that he was respondent, and made an appearance as respondent.

53. On August 1, 2013, Morrissey appeared by Court-Call in *ZF Micro Solutions, Inc., et al. v. Gordon & Rees LLP, et al.*, San Francisco County Superior Court, Case No. CGC-12-524815, on behalf of Plaintiffs/Cross-Defendants. Morrissey represented that he was respondent, and made an appearance as respondent.

54. On August 5, 2013, an answer was filed on behalf of ZF Micro Solutions and David Feldman to a First Amended Cross-Complaint in *ZF Micro Solutions, Inc., et al. v. Gordon & Rees LLP, et al.*, San Francisco County Superior Court, Case No. CGC-12-524815. The answer listed respondent as counsel of record for Plaintiffs/Cross-Defendants, and bore a signature that purported to be respondent's signature. Respondent did not write or sign the answer, and did not review it before it was filed.

55. On August 28, 2013, Morrissey appeared by Court-Call in *ZF Micro Solutions, Inc., et al. v. Gordon & Rees LLP, et al.*, San Francisco County Superior Court, Case No. CGC-12-524815, on behalf of Plaintiffs/Cross-Defendants. Morrissey represented that he was respondent, and made an appearance as respondent.

56. On October 18, 2013, Morrissey emailed Ireland and Feldman and said that McCarroll filed and served everything concerning a discovery hearing scheduled before Judge Zepeda in *ZF Micro Solutions, Inc., et al. v. Gordon & Rees LLP, et al.*, San Francisco County Superior Court, Case No. CGC-12-524815. Feldman was also forwarded a PDF that contained discovery questions that Feldman then forwarded to all of the other plaintiffs.

57. On November 15, 2013, the Substitution of Attorney forms signed by the shareholder plaintiffs consenting to respondent as the new attorney and bearing respondent's inauthentic signature were filed in the respective cases.

58. On November 22, 2013, an answer was filed on behalf of Terry Ireland, Marsha Armstrong, and the other Plaintiffs/Cross-Defendants in *ZF Micro Solutions, Inc., et al. v. Gordon & Rees LLP, et al.*, San Francisco County Superior Court, Case No. CGC-12-524815. The answer listed respondent as counsel of record for Plaintiffs/Cross-Defendants, and bore a signature that purported to be respondent's signature. Respondent did not write or sign the answer, and did not review it before it was filed.

59. On December 9, 2013, Morrissey appeared by Court-Call in *ZF Micro Solutions, Inc., et al. v. Gordon & Rees LLP, et al.*, San Francisco County Superior Court, Case No. CGC-12-524815, on behalf of Plaintiffs/Cross-Defendants. Morrissey represented that he was respondent, and made an appearance as respondent.

60. On December 11, 2013, a request for dismissal as to Defendant Pacific Employers Insurance Group was filed on behalf of the Plaintiffs in *ZF Micro Solutions, Inc., et al. v. Gordon & Rees LLP, et al.*, San Francisco County Superior Court, Case No. CGC-12-524815. The request for dismissal listed respondent as counsel of record for plaintiffs, and bore a signature that purported to be respondent's signature. Respondent did not write or sign the request for dismissal, and did not review it before it was filed.

61. On December 28, 2013, Feldman and Ireland received an email from Morrissey concerning discovery that stated: "The motion for new trial will be due soon. It is due in 15 days. It is jurisdictional. I can



do it if Jeff [Berger] wants. I have finished the discovery answers for the individuals but need the damages calculations and the personal information. Dave can you send it to me. I also need documents supporting the damages essentially the bond info and payments. Dave, I need to make a complete copy of your electronic file as well as emails to the individuals. We are scheduled to produce documents on January 2, 2014, at ZF. Tracey will supervise. We will just point to the three files – Trepel, Gordon, and Ropers and copy the electronic disc. Sorry to spoil your respite, but it's time to get back to war.”

62. On December 29, 2013, Feldman and Ireland received an email from Morrissey that stated: “I need the answers to the personal questions to the individuals immediately. I know you said you provided the damages calculations, but I only have Bill’s. I plan on filing the answers tomorrow with the verification to follow. I will sign Tobin up next week. I am talking to another Lawyer for you and Marsha against Trepel next week. Will respond to rest of stuff tomorrow after I file.”

63. On December 31, 2013, Feldman and Ireland received an email from Morrissey that read: “I prepared the answers to discovery but need to sit down with you to do it right. Since I did not have to verify it we should just redo it. I or Tracey will bring it to you. Tracey will sit with you. I want to show them the files from Ropers, Gordon, Gordon and Tony. Then you should show them the copy records kept in filing cabinets indicating they are financial documents such as invoices, etc. I want you to put your electronic records concerning the law on a disc. This would include emails about the law suit to the other plaintiffs. It would include the file as well. It would include emails to Ropers and Gordon and Tony. No emails between you and me or any other proposed counsel. I will talk to Tobin today and sign him up. I am also going to talk with a former employee to do your and Marsha’s cases. The gathering of all of the requested documents and verifications took Feldman months to assemble that he gave to Morrissey and McCarroll when they met him at his business, ZF Solutions.”

64. Shortly thereafter, Attorney Melissa Dubs from Ropers & Majeski, her paralegal, and McCarroll met at ZF Micro Solutions to look at discovery. McCarroll set up the meeting while representing herself as respondent’s paralegal. Respondent was not present.

65. On January 2, 2014, Dubbs returned to ZF Micro Solutions with her tech personnel, who, with Feldman’s permission, downloaded the discovery from Feldman’s computer that he already provided to an external hard-drive. Respondent was not present.

66. On February 21, 2014, the Declaration of Robert A. Machado in Support of Plaintiff’s Opposition to Defendant Illinois Insurance Company’s Motion to Compel Compliance with the Court’s prior order filed December 20, 2013, was filed on behalf of the plaintiffs in *ZF Micro Solutions, Inc., et al. v. Gordon & Rees LLP, et al.*, San Francisco County Superior Court, Case No. CGC-12-524815. The declaration listed respondent as counsel of record for plaintiffs, and bore a signature that purported to be respondent’s signature executed under penalty of perjury. Respondent did not write or sign the declaration, and did not review it before it was filed.

67. On March 14, 2014, *Ireland et al., v. Gordon & Rees LLP, et al.*, San Francisco County Superior Court, Case No. CGC-12-524546, was consolidated with *ZF Micro Solutions, Inc., et al. v. Gordon & Rees LLP, et al.*, San Francisco County Superior Court, Case No. CGC-12-524815.

68. On March 28, 2014, McCarroll and Morrissey visited Feldman at ZF Micro Solutions to pick up discovery from Feldman and drop off a thumb drive with materials from Gordon and Rees.

69. On April 9, 2014, the Declaration of Robert Machado in Support of the Ireland Plaintiffs’ Opposition to Ropers, Majeski, Kohn & Bentley, PC’s Motion for Evidentiary Sanctions for Misuse of Discovery including Failure to Obey Court Orders to Serve Discovery Responses, Produce Documents, and Meet and Confer, and to Establish Truth of Admissions; or, in the Alternative, for Order to Compel Ireland

Plaintiffs' Compliance with Prior Court Order dated February 19, 2014, and for Monetary Sanctions was filed on behalf of Plaintiffs/Cross-Defendants in *Ireland et al., v. Gordon & Rees LLP, et al.*, San Francisco County Superior Court, Case No. CGC-12-524546, (now consolidated with *ZF Micro Solutions, Inc., et al. v. Gordon & Rees LLP, et al.*, Case No. CGC-12-524815). The declaration listed respondent as counsel of record for plaintiffs, and bore a signature that purported to be respondent's signature executed under penalty of perjury. Respondent did not write or sign the declaration, and did not review it before it was filed.

70. On May 27, 2014, Feldman logged into the San Francisco Superior Court website to check on future court hearings. The court calendar listed dates for summary judgment concerning discovery sanctions. Feldman downloaded the orders, which stated that none of the discovery had been met and there had been non-appearances at scheduled court hearings.

71. Shortly thereafter, Feldman attempted to reach respondent, but was unable to do so.

72. After Feldman was unable to get in touch with or contact respondent, he phoned Morrissey and told him of what he had learned. Morrissey said that everything was being taken care of, and that there were never any missed appearances as "I have always appeared." Feldman asked, "How could this be as you are disbarred?" Morrissey replied, "I used Court Call and always told them that I was [respondent]."

73. On July 1, 2014, Feldman and Ireland received an email from Morrissey saying that LEXIS-NEXIS, research program, had been shut off for nonpayment. Morrissey said that he needed the account reopened for emergency research. Morrissey also said that he would send a list of costs for Court Call expenses for appearances in the San Francisco case that McCarroll had put on her credit card.

74. On August 8, 2014, respondent signed a tolling agreement regarding any civil cause of action filed by Feldman/ZF Micro Solutions against respondent.

75. In mid-January 2015, Feldman learned that Judge McBride refused to dismiss the motion for relief from discovery orders. Feldman contacted respondent directly and asked respondent to appear at the next court hearing set for March 15, 2015, and tell the court what he knew. Respondent refused to make an appearance, but offered to sign and notarize a declaration that he told Feldman to write for respondent's review and signature.

76. On March 5, 2015, respondent executed a declaration in support of a motion for reconsideration of the denial of motion for relief from discovery orders in *Ireland et al., v. Gordon & Rees LLP, et al.*, San Francisco County Superior Court, Case No. CGC-12-524546. In his declaration, respondent stated that none of the filings or declarations bearing his signature prior to November 3, 2014, were written, reviewed, or signed by him. The filings that purported to be signed by him, but were not in fact signed by him, were attached as exhibits. He also stated that he had not appeared at the December 9, 2013, appearance by Court-Call. Respondent also admitted that he had previously refused to act in any capacity as Plaintiffs/Cross-Defendants' lawyer, or to review documents or court records, because he knew he was going to be named in a malpractice case based on his failure to monitor the activities of Morrissey and McCarroll. The declaration was filed with the San Francisco Superior Court on March 19, 2015, under case number CGC-12-524546.

77. Neither Morrissey nor respondent ultimately submitted discovery responses in the ZF Micro Solutions cases – although the clients had provided the requested information – which resulted in discovery sanctions, defaults, and judgments against ZF Micro Solutions and its shareholders.

#### CONCLUSIONS OF LAW:

78. The facts and circumstances surrounding the above-described conviction involve moral turpitude.

## AGGRAVATING CIRCUMSTANCES.

**Significant Harm (Std. 1.5(j)):** Respondent caused significant harm to a client. In his declaration in support of the motion for reconsideration, respondent stated that he bore full fault for not properly supervising and managing the case. Correspondingly, respondent was obligated to pay \$325,000 in restitution for harm caused, not theft, as a condition of his criminal probation. As part of his plea agreement, his clients retained the ability to pursue him further for any additional damages that they suffered as a result of respondent's malpractice. Additionally, respondent caused harm to the administration of justice by allowing an ineligible attorney to practice law behind his license.

## MITIGATING CIRCUMSTANCES.

**No Prior Record of Discipline:** Respondent is entitled to significant mitigation for his discipline free practice of over 30 years. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [20 years of discipline free practice highly significant].)

**Good Character:** Respondent provided declarations from six individuals, including three family members, two of which are attorneys, who attested to his overall good character. They were familiar with respondent's conviction, and nonetheless attested to his overall good character. Respondent is entitled to limited mitigation for his good character. (*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476 [weight of character evidence reduced where wide range of references lacking].)

**Pretrial Stipulation:** By entering into this stipulation, respondent has acknowledged his 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 [mitigative credit 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 [attorney's stipulation to facts and culpability considered a mitigating circumstance].)

## AUTHORITIES SUPPORTING DISCIPLINE.

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

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re 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).)

Standard 2.15(c) provides that "Disbarment or actual suspension is the presumed sanction for final conviction of a misdemeanor involving moral turpitude." Respondent's conviction for violation of Penal Code section 32 is *per se* a conviction involving moral turpitude.

### Case Law

In determining the appropriate level of discipline within the range set forth in standard 2.15(c) [actual suspension to disbarment], much weight must be given to *In re Young, supra*. Young had been admitted for 20 years prior to his criminal acts leading to his conviction. Young's former client/friend/former employee, McDaniel, was arrested for participating in a robbery during which McDaniel shot a victim. McDaniel was not charged with the robbery and was released, but shortly thereafter a warrant for his arrest was issued. McDaniel fled to Hawaii and requested that Young send him funds, which Young did. McDaniel returned to California, but did not surrender. In fact, McDaniel was arrested for petty theft and gave police a false name. Although aware that McDaniel's shooting victim had subsequently died, Young arranged for bail for McDaniel under the false name and secured his release. Respondent and McDaniel were both arrested a few days later. One month later, murder charges were filed against McDaniel. The Review Department recommended a three-year actual suspension with no credit for the time that Young had already spent on inactive status, in reliance on former standard 3.2 which provided: "Final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission shall result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a two-year actual suspension, prospective to any interim suspension imposed, irrespective of mitigating circumstances." Young had already served three years on interim suspension prior to the Review Department's recommendation to the Supreme Court. The Supreme Court found that "At worst, petitioner – who did handle some criminal matters – knew that there was a possibility that McDaniel might eventually be charged with murder, but at the times prior to his arrest, the evidence indicates that he only knew McDaniel had committed robbery. [Footnote omitted]" However, the Supreme Court found Young's arrangement for McDaniel's bail under a false name "allowed a fugitive wanted for a violent felony to evade prosecution", constituting a fraud on the court. The Supreme Court found the Review Department's recommended discipline to be excessive. The Supreme Court found the following to be mitigating: Young's "good motives" and "deep conviction that he should help those in need", his post-conviction therapy, the opinion of Young's therapist that the chance of recidivism was low, absence of prior discipline, cooperation with authorities after his arrest and with the State Bar, recognition of his wrongdoing, remorse, character witness testimony/letters that the misconduct was highly unlikely to recur, and that Young had been physically, mentally, and emotionally exhausted. The Supreme Court imposed a four-year actual suspension and five years' probation, with credit toward the actual suspension for the three year interim suspension, as adequate to protect the public.<sup>1</sup> Thus, Young served a total four-year actual suspension (three years on interim suspension and one year prospectively).

Here, respondent was convicted of a misdemeanor rather than a felony, and had more years in practice without prior discipline than Young. Young's conduct was deliberate and intentional, whereas respondent's misconduct was a result of his being grossly negligent in his supervision over Morrissey and McCarroll. Additionally, as noted above, respondent has presented limited evidence of good character. Balancing the substantial mitigation of 32 years in practice without discipline against the aggravation of substantial harm to the client and to the administration of justice by allowing a disbarred attorney to continue to practice law, the public would be adequately protected by a three-year suspension stayed, four-years' probation, and a two-year actual suspension

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<sup>1</sup> Young was also ordered to obtain mental health treatment during probation. He was eventually disbarred in 2013 in his sixth or seventh disciplinary proceeding.

with standard conditions of probation, including Ethics School, passage of the MPRE, and compliance with rule 9.20, California Rules of Court.

A two-year actual suspension with a rehabilitation serves to warn other potential clients of respondent's failure to supervise a disbarred attorney, reassures the courts that the State Bar is policing the legal profession, and serves an educational function for both respondent and the legal profession, thereby maintaining professional standards and preserving public confidence in the legal profession and is within the level of discipline recommended by standard 2.15(c).

**COSTS OF DISCIPLINARY PROCEEDINGS.**

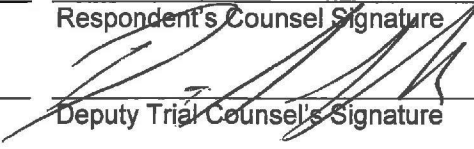
Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of February 12, 2019, the discipline costs in this matter are \$5,789. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: ROBERT ALAN MACHADO	Case Number(s): 16-C-13277-YDR
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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.



_____	_____	_____
Date	Respondent's Signature	Print Name
_____	_____	_____
Date	Respondent's Counsel Signature	Print Name
2/13/19		Danielle Adoración Lee
_____	_____	_____
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: <b>ROBERT ALAN MACHADO</b>	Case Number(s): <b>16-C-13277-YDR</b>
---	--

**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>Feb. 13, 2013</u> Date	<u></u> Respondent's Signature	<u>Robert Alan Machado</u> Print Name
<u>Feb. 13, 2013</u> Date	<u></u> Respondent's Counsel Signature	<u>Vicki H. Young</u> Print Name
_____ Date	_____ Deputy Trial Counsel's Signature	<u>Danielle Adoración Lee</u> Print Name

(Do not write above this line.)

In the Matter of: ROBERT ALAN MACHADO	Case Number(s): 16-C-13277-YDR
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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.

1. On page 1 of the Stipulation, at paragraph A.(3), line 3, "23" is deleted, and in its place is inserted "24".
2. On page 6 of the Stipulation, at paragraph D.(7), the paragraph with the bullet point, line 1, "a minimum of" is inserted after "for".
3. On page 9 of the Stipulation, at paragraph E.(13), the "X" in the box and the language in bold on lines 1-4 after "probation" are deleted.
4. On page 9 of the Stipulation, an "X" is inserted in the box at paragraph F.(3) requiring Respondent to comply with California Rules of Court, Rule 9.20.
5. On page 10 of the Stipulation, an "X" is inserted in the box at paragraph F.(6), and at line 2, after "requirements:" the following language is inserted: "Respondent will remain actually suspended from the practice of law until Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)"

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See Rules Proc. of State Bar, rule 5.58(E) & (F).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order. (See Cal. Rules of Court, rule 9.18(a).)**

March 4, 2019  
Date

Rebecca Meyer Rosenberg  
REBECCA MEYER ROSENBERG, JUDGE PRO TEM  
~~Judge of the State Bar Court~~

**DECLARATION OF SERVICE BY REGULAR MAIL**

**RE: MACHADO**

**CASE NO. 16-C-13277**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco, on the date shown below, a true copy of the within

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVNG – ACTUAL SUSPENSION**

in a sealed envelope placed for collection and mailing at San Francisco, on the date shown below, addressed to:

**Vicki H. Young  
Law Offices of Vicki H. Young  
2211 Park Blvd  
Palo Alto, CA 94306-1533**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

DATED: February 14, 2019

Signed:   
Janese Bodin  
Declarant

**CERTIFICATE OF SERVICE**

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

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on March 5, 2019, I deposited a true copy of the following document(s):

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

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


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

VICKI HUI-WEN YOUNG  
LAW OFFICES OF VICKI H. YOUNG  
2211 PARK BLVD  
PALO ALTO, CA 94306 - 1533

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

DANIELLE A. LEE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 5, 2019.

  
\_\_\_\_\_  
Mazie Yip  
Court Specialist  
State Bar Court