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

Counsel For The State Bar Erica L. M. Dennings Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2285 Bar # 145755	Case Number(s): 16-O-10032-LMA	For Court use only <div style="text-align: center; font-size: 1.2em; font-weight: bold;">PUBLIC MATTER</div> <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.2em;">JUN 13 2017 <i>WA</i></div> STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent David Marvin Wiseblood 601 Montgomery Street Suite 2000 San Francisco, CA 94111 (415) 547-2700 Bar # 115312	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: David Marvin Wiseblood Bar # 115312 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 3, 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.
- (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 **14** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



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

B. Aggravating Circumstances [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. **See p. 11**
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See p. 11**
- (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 p. 11
- (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. **See p. 11**
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and 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.

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- (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 discipline: See p. 11
Pre trial stipulation: See p. 11

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 **one (1) year**, 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 **sixty (60) 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 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.

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- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

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

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAVID MARVIN WISEBLOOD
CASE NUMBER: 16-O-10032-LMA

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 16-O-10032 (State Bar Investigation)

FACTS:

Discovery

1. Masha Levinson and Leon Taylor (“clients”) retained respondent in September 2011 to represent them in connection with their dispute with Mark Migdal concerning a 21 unit apartment building complex in Oakland, California which they purchased together in 2008. (Levinson and Taylor jointly owned a 50% stake and Mark Migdal owned 50%).
2. On January 27, 2012, Mark Migdal, individually and as trustee of the Mark Migdal 2000 Revocable Trust, filed a verified complaint against Levinson and Taylor in a matter entitled *Mark Migdal, an individual, and Mark Migdal as Trustee of the Mark Migdal 2000 Revocable Trust, v. Masha Levinson, an individual, Leon Taylor, an individual, and Leon Taylor as Trustee of the Emily Taylor 1999 Revocable Trust, et al.*, San Francisco Superior Court case number CGC-12-517687.
3. On April 17, 2012, respondent filed a verified answer denying the allegations and asserted affirmative defenses.
4. On March 5, 2012, Migdal served a Demand for Inspection, Set One. Respondent received the Demand for Inspection, failed to notify his clients about the Demand, and failed to respond timely to the Demand.
5. On April 26, 2012, Migdal served Special Interrogatories, Set One and Form Interrogatories, Set One, and Requests for Admissions. Respondent received the Interrogatories and Requests for Admissions, failed to notify his clients of the discovery request, i.e. Special Interrogatories, Form Interrogatories, and Requests for Admission, and failed to respond timely.
6. On May 1, 2012, Migdal filed a Motion for Order Compelling Response to Demands for Inspection and Sanction. Respondent failed to inform his clients that Migdal filed a motion to compel responses to discovery. Respondent filed an opposition to the motion on May 11, 2012.
7. By order dated May 23, 2012, the Court granted the motion and ordered respondent to provide full and complete responses without objection within ten days. Respondent failed to notify his

clients that the court issued an order granting the motion. Respondent failed to provide discovery responses within ten days.

8. On or about June 18, 2012, Migdal filed a Motion for Order Compelling Defendants' Responses to Form Interrogatories, and Special Interrogatories, that Requests for Admissions be Deemed Admitted and Sanctions. Respondent failed to notify his clients that a motion to compel was filed. Respondent did not file an opposition to the motion.

9. By order dated July 16, 2012, the Court granted the June 18, 2012 motion and ordered respondent to serve responses to form interrogatories and special interrogatories within ten days, that the requests for admission and the genuineness of documents therein be deemed admitted, and to pay sanctions in the amount of \$1100 within ten days. Respondent failed to notify his clients that the court granted the motion to compel and ordered sanctions. Respondent failed to provide complete and verified discovery responses within ten days. Respondent paid the sanctions.

10. On August 20, 2012, Migdal filed a Motion for Order Striking Out Defendants' Answer, Rendering Judgment by Default against Defendants and for Monetary Sanctions due to respondent's failure to provide discovery responses pursuant to the July 16, 2012 court order. Respondent failed to inform his clients that the motion was filed. Respondent failed to oppose the motion.

11. By order dated September 18, 2012, the court ordered that respondent serve discovery responses by September 24, 2012, and that if respondent did not serve responses by September 24, 2012, the terminating sanctions would be granted. The court ordered \$1640 in sanctions to be paid within ten days of the order. Respondent failed to inform his clients about the motion to compel or that the court granted the motion and awarded sanctions. Respondent paid the sanctions.

12. In a letter dated September 21, 2012, respondent told his clients that he needed to get discovery responses out on the following Monday. Respondent failed to disclose that the court had already heard multiple discovery motions filed by Migdal and that the court had issued various orders compelling them to respond to discovery. Respondent enclosed proposed responses with the letter. The clients provided full responses. On September 24, 2012 respondent served a response to Form Interrogatories and Special Interrogatories.

13. On September 5, 2012, Migdal filed a Motion for Order Compelling Further Responses to Demands for Inspection, Set One and for Monetary Sanction. Respondent failed to inform his clients of this motion. Respondent filed an opposition on September 14, 2012.

14. By order dated October 2, 2012, the court granted Migdal's Motion to Compel Further Responses to Demands for Inspection, Set One. Respondent did not inform his clients that Migdal sought further responses to the Demands for Inspection, nor did he inform the clients that the Court granted the motion. Respondent failed to comply with the October 2, 2012 order.

15. On November 21, 2012, Migdal filed a second Motion for Order Striking Defendants' Answer, Rendering Judgment by Default, and for Monetary Sanctions. Respondent failed to inform his clients of the motion. Respondent filed an opposition on December 10, 2012.

16. By order dated March 27, 2013, the Court ordered that terminating sanctions would issue unless respondent filed verified responses to Demands for Inspection, Set One within ten days. The court awarded sanctions in the amount of \$3240 to be paid personally by respondent. Respondent did

not inform his clients of the Court's Order. Respondent failed to provide verified responses to the Demand for Inspection. Respondent paid the sanctions.

17. On April 8, 2014, Migdal filed a First Amended Complaint ("FAC") in which he added new causes of action and allegations. Respondent filed and served an answer to the FAC on June 16, 2014 again asserting various affirmative defenses.

18. On April 24, 2014, Migdal served another set of Form Interrogatories (based on the FAC). Respondent believed the Form Interrogatories were duplicative of the previous set of Form Interrogatories. Respondent failed to inform his clients of the discovery, failed to respond, and failed to seek a protective order.

19. In June 2014, Migdal served a set of Requests for Documents based on the FAC. Respondent failed to inform his clients of the discovery, and failed to respond to the Requests for Documents. Respondent failed to inform his clients of the discovery, failed to respond, and failed to seek a protective order.

20. On August 29, 2014, Migdal filed a Motion to Compel Responses to Written Discovery and for Reimbursement of Reasonable Attorneys' Fees and Costs. Respondent failed to oppose the motion and failed to inform his clients of the motion.

21. By order dated September 30, 2014, the Court granted the Motion to Compel Responses to Written Discovery and ordered respondent to serve verified responses to Form Interrogatories and Requests for Production and to produce the documents no later than October 14, 2014 and to pay monetary sanctions in the amount of \$1,165. Respondent failed to inform his clients that the motion was granted. Respondent failed to provide the discovery as ordered by the Court. Respondent paid the sanctions.

22. On October 27, 2014, Migdal filed an Ex Parte Application for An Order Shortening Time for Hearing on Motion, and Motion for Terminating Sanctions, Evidentiary Sanctions, and Monetary Sanctions. Respondent failed to inform his clients of the motion.

23. On November 4, 2014, respondent filed an opposition to Migdal's Motion for Terminating Sanctions.

24. By order dated November 17, 2014, the Court granted the Motion for Terminating Sanctions and struck defendants' answer to the FAC. Respondent was aware of the order. Respondent failed to inform his clients of the order. Respondent failed to take any steps to set aside or appeal the order.

25. On December 18, 2014, the Court granted Migdal's Request for Entry of Default. Respondent failed to inform his clients that Migdal's Request for Entry of Default was granted.

26. From the time the complaint was filed, January 27, 2012, until September 1, 2015, respondent misrepresented to his clients on several occasions that everything was proceeding fine with their case, when he knew this was false and misleading. The Court scheduled a prove-up hearing on Migdal's Motion for Entry of Default Judgment for September 1, 2015. Respondent was aware of the date and failed to notify his clients..

27. On September 1, 2015, respondent appeared at the prove-up hearing. Respondent asked to examine Migdal, but the Court denied his request. Respondent then left the hearing. Respondent

failed to inform his clients that he appeared at the prove-up hearing, but left before it was complete. Respondent did not take any action to determine the outcome of the prove-up hearing.

28. Following the prove-up hearing, the Court ordered judgment in the amount of \$1,707,021 entered against respondent's clients. The Court also ordered the remaining half of the sale proceeds in the blocked account be disbursed to Migdal. Respondent failed to inform his clients about the entry of judgment. Respondent's clients learned about the default judgment from a friend.

29. On October 29, 2015, Levinson and Taylor, through new counsel, filed a motion to set aside the default. Respondent signed a declaration in support of the motion to set aside the default admitting his failures to perform and misrepresentations to his clients about the status of the case.

Actions regarding the property at issue

30. On September 12, 2012, respondent filed a motion for immediate sale of the subject property.

31. By order dated September 28, 2012, over Migdal's objection, the Court granted the motion and ordered the sale of the property and directed that the proceeds be placed in a court controlled/blocked account pending resolution of the case. The net proceeds from the sale, \$1,951,514.79, were deposited into the blocked account.

32. On April 11, 2013, Migdal filed a Motion for Order Releasing Plaintiff's Share of Proceeds from Sale. Respondent did not file a written opposition, contest the tentative ruling granting the motion or appear at the hearing of the motion on May 8, 2013.

33. By order dated May 8, 2013, the court granted the motion. Accordingly, Migdal withdrew \$975,757.35 from the blocked account. The other half of the funds, representing respondent's clients' interests in the funds was left in the account. Respondent represented to his clients that he would apply to the court for an order releasing all or some of the remaining funds to them, but failed to do so.

CONCLUSIONS OF LAW:

34. By failing to comply with discovery requests, failing to oppose motions to compel compliance with discovery requests, failing to take steps to set aside or appeal the orders compelling discovery and terminating sanctions, failing to file a response to plaintiff's motion to release funds from sale of property, failing to take steps to get his clients' share of the sale proceeds released, failing to protect his clients' interests at the prove up hearing, respondent repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

35. By not informing his clients of the discovery requests, the motions to compel, the orders granting the motions to compel, the order granting the motion to strike their answer and enter default, and not informing them of the date of the default prove-up hearing, and that a default judgment was entered against them, respondent failed to inform his clients of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

36. By not providing complete and verified responses to discovery in a timely fashion, respondent failed to obey court orders in willful violation of Business and Professions Code, section 6103.

37. By falsely stating to his clients after November 17, 2014, that everything was proceeding well with their case when respondent knew that the motion to strike the answer and for terminating sanctions had been granted, respondent committed an act of dishonesty and moral turpitude in willful violation of Business and Professions Code, section 6106.

AGGRAVATING CIRCUMSTANCES.

Intentional Misconduct, Bad Faith or Dishonesty (Std. 1.5(d)): Respondents failures to comply with discovery and inform his clients about the true status of their case were intentional.

Significant Harm to Client, Public or Administration of Justice (Std. 1.5(j)): Respondent's clients lost more than \$975,000 due to an entry of judgment on a case for which they had valid defenses and the clients were required to expend additional funds for a new attorney to set aside the default judgment. The court's resources were wasted when respondent refused to provide discovery and a default was entered, and then the default was set aside. The case took longer than it should.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent repeatedly failed to comply with discovery, failed to obey court orders to provide complete discovery, failed to inform his clients about discovery, pending motions, and orders to compel and to pay sanctions. Respondent also misrepresented the status of the case to the clients.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent was admitted to the practice of law in California on December 3, 1984 and has no prior record of discipline. Respondent is entitled to significant mitigation for having practiced law for 28 years without discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct.

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].)

Prompt objective steps, demonstrating spontaneous remorse and recognition of the wrongdoing and timely atonement (Standard 1.6(g)): On October 29, 2015, Respondent executed a declaration in support of his clients' motion to set aside the default in which he admitted his failure to perform and misrepresentations to the clients regarding the status of the case.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for

Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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

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

In this matter, respondent committed numerous acts of professional misconduct-repeated instances of failure to perform, obey court orders, communicate to his clients, and misrepresentation to his clients. .

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.”

In this matter, both Standards 2.11, relating to moral turpitude, and 2.12 relating to violation of oath or duties of attorney (failure to obey court orders) call for disbarment or actual suspension depending on the gravity of misconduct.

In this matter, respondent failed to perform competently, failed to communicate significant developments, failed to obey court orders and misrepresented the status of the case to clients over a three year period. Respondent’s misconduct is aggravated by the significant financial harm to his clients and to the administration of justice, the intentional nature of his actions, and because there were multiple acts. Respondent’s misconduct is mitigated by the fact that he has no prior discipline in 28 years of practice, he provided a declaration in support of his clients’ motion to set aside the default in the *Migdal v. Levinson* matter, which was granted, and his representation of another client that demanded a large portion of his time. In 2014 and 2015, respondent represented Lexington Street Investments, LLC in a contentious complicated business matter, *Lexington Street Investments, LLC, v. Robert Dahl*, Napa County Superior Court case number 26-64849. On March 16, 2015, the managers of Lexington and Napa Point Winery both died (in a murder suicide). As a result, respondent made numerous court appearances to appoint a receiver, and this consumed more time than anticipated. As a sole practitioner, respondent did not devote adequate time to the *Migdal* matter. The urgent issues of the case have been resolved now such that respondent can devote more time to his other cases.

In *Wren v. State Bar* (1983) 34 Cal.3d 81, the attorney received 45 days’ actual suspension, two years stayed suspension, and two years’ probation for failure to communicate, failure to perform, and

misrepresenting the status of the case to a client. Wren misrepresented a trial date had been set in the matter when he had not even filed a complaint. Wren had no prior record of discipline.

In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal.State Bar Ct. Rptr. 41, the attorney received a 6 months suspension, stayed, with one year probation for his handling of an automatic appeal from a capital sentence for failing to perform competently, failure to comply with Supreme Court orders, and failing to report judicial sanctions. The misconduct stemmed from Riordan failing to file appellant's opening brief for more than two years. The Court found two aggravating factors; multiple acts and harm to the administration of justice. The Court gave respondent mitigating credit for having no prior in 18 years of practice (despite finding the misconduct serious), some weight to four character witnesses, and mitigation for cooperation with the State Bar for entering into a comprehensive factual stipulation. The Court emphasized the uniqueness of the case, in that Riordan had never handled a capital appeal before and was in over his head and that his actions were to try to help his client. The Court noted that there was no harm to the client, just to the administration of justice for the delay and that there was no moral turpitude.

Respondent's misconduct is more serious than the attorney in *Riordan* because of the length of time of the misconduct and respondent's misrepresentations. Respondent's misconduct is also more serious than that of the attorney in *Wren* because of the repeated failures to perform over 3 years in the matter and the prolonged period of time over which he misrepresented the status of the case. Because respondent's misconduct is very serious and involves misrepresentation, some actual suspension is warranted. Considering the misconduct and all mitigating and aggravating factors, including respondent's 28 years of practice with no priors, an appropriate discipline is sixty days' actual suspension, one year stayed suspension, one year probation with standard probation conditions.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of June 5, 2107, the discipline costs in this matter are \$7793. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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

Respondent may not receive MCLE credit for completion of State Bar Ethics School, and/or any other educational course(s) to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: DAVID MARVIN WISEBLOOD	Case number(s): 16-O-10032-LMA
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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.

6/7/17

Date



Respondent's Signature

David Marvin Wiseblood
Print Name

Date

7 June 2017

Date

Respondent's Counsel Signature



Senior Trial Counsel's Signature

Print Name

Erica L. M. Dennings
Print Name

(Do not write above this line.)

In the Matter of: DAVID MARVIN WISEBLOOD	Case Number(s): 16-O-10032-LMA
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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

June 13, 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 June 13, 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:

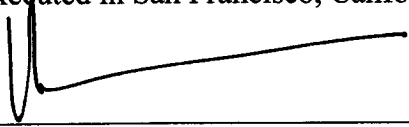
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

DAVID MARVIN WISEBLOOD
LAW OFFICES OF DAVID M.
WISEBLOOD
601 MONTGOMERY ST # 2000
SAN FRANCISCO, CA 94111

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

Erica L. M. Dennings, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 13, 2017.



Vincent Au
Case Administrator
State Bar Court