



(Do not write above this line.)

State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel for the State Bar Dina E. Goldman Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2077 Bar # 142601	Case Number(s): 16-O-11358-MC [17-O-01825]	For Court use only PUBLIC MATTER FILED <i>WY</i> FEB 25 2019 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Jonathan Arons Law Ofc Jonathan I Arons 100 Bush Street, Ste. 918 San Francisco, CA 94104 (415) 957-1818 Bar # 111257	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 REY SILVA Bar # 152690 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 **June 6, 1991**.
- (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 20 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."

WY

(Effective July 1, 2018)

(Do not write above this line.)

- (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.

(Do not write above this line.)

- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of 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. **See page 17.**
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [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.
- (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. See page 17.
- (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:

Lack of Prior Discipline – See page 17.

Pre-trial Stipulation – See page 17.

Community Service – See pages 17-18.

Remorse/Remedial Steps – See page 18.

D. Recommended Discipline:

- (1) **Actual Suspension:**
- Respondent is suspended from the practice of law for one year, the execution of that suspension is stayed, and Respondent is placed on probation for one year with the following conditions.
- Respondent must be suspended from the practice of law for the first 90 days 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:**

(Do not write above this line.)

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:

(Do not write above this line.)

- 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. 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 _____, the execution of that suspension is stayed, and Respondent is placed on probation for _____ with the following conditions.

- Respondent is suspended from the practice of law for the first _____ of probation (with credit given for the period of interim suspension which commenced on _____).

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

(Do not write above this line.)

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

(Do not write above this line.)

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.

(Do not write above this line.)

- (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 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: _____
- (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.

(Do not write above this line.)

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. (*Atheam 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. (*Atheam 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:

(Do not write above this line.)

In the Matter of: DAVID REY SILVA	Case Number(s): 16-O-11358-MC [17-O-01825]
--------------------------------------	---

Financial Conditions

(1) **Restitution (Single Payee)**

SELECT ONE /Reproval Conditions Period, Respondent must make restitution in the amount of \$, plus 10 percent interest per year from , to or such other recipient as may be designated by the Office of Probation or the State Bar Court (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) and must furnish satisfactory proof of restitution to the Office of Probation. [Such restitution may be made by partial payments or by a single lump sum payment during the period specified above.]

(2) **Installment Restitution Payments (Single Payee)**

In addition to the above deadline for completing restitution and for as long as the full amount of restitution remains unsatisfied, Respondent must make installment payments according to the following payment schedule:

Respondent must make SELECT ONE payments in the amount of \$ to . The obligation to make such payments will commence days after the effective date of the SELECT ONE order imposing discipline in this matter. Such payments will be due on the day of each calendar SELECT ONE thereafter and be deemed delinquent if not submitted to such payee, or such other recipient as may be designated by the Office of Probation or the State Bar Court, within ten (10) days thereafter.

With each quarterly and final report, or as otherwise directed by the Office of Probation, Respondent must provide satisfactory proof of such installment payments to the Office of Probation.

(3) **Restitution (Multiple Payees)**

SELECT ONE /Reproval Conditions Period, 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 such other recipient as may be designated by the Office of Probation or the State Bar Court (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>

(4) Installment Restitution Payments (Multiple Payees)

In addition to the above deadline for completing restitution, Respondent must make installment payments of restitution according to the following schedule:

<i>Payee</i>	<i>Minimum Payment Amount</i>

Respondent must commence making such payments within _____ days after the effective date of the **SELECT ONE** _____ order imposing discipline in this matter. Such payments will be due on the _____ day of each calendar **SELECT ONE** thereafter and be deemed delinquent if not submitted to such payee, or such other recipient as may be designated by the Office of Probation or the State Bar Court, within ten (10) days thereafter. The obligation to make installment payments to a particular payee will terminate when the full amount of restitution owed to that payee, including accrued interest, has been paid.

With each quarterly and final report, or as otherwise directed by the Office of Probation, Respondent must provide satisfactory proof of such installment payments to the Office of Probation.

(5) Reporting re Proper Handling of Entrusted Client Funds, Property, or Securities

Respondent must comply with the following reporting requirements:

- a. If Respondent possessed client funds, property, or securities at any time during the period covered by a required quarterly or final report, Respondent must submit with the report for that period a statement made by Respondent under penalty of perjury that:
 - i. Respondent handled all such client funds, property, and/or securities in compliance with rule 4-100 of the Rules of Professional Conduct; and
 - ii. Respondent complied with the "Trust Account Record Keeping Standards" adopted by the State Bar Board of Trustees, pursuant to rule 4-100(C) of the Rules of Professional Conduct.
- b. If Respondent did not possess any client funds, property, or securities during the entire period covered by a quarterly or final report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period.

(6) Reporting re Proper Handling of Entrusted Client Funds, Property, or Securities (Accountant certification – 1st Report)

Respondent must comply with the following reporting requirements:

- a. If Respondent possessed client funds, property, or securities at any time during the period covered by a required quarterly or final report, Respondent must submit with the report for that period a statement that:

(Do not write above this line.)

- i. Respondent handled all such client funds, property, and/or securities in compliance with rule 4-100 of the Rules of Professional Conduct; and
- ii. Respondent complied with the "Trust Account Record Keeping Standards" adopted by the State Bar Board of Trustees, pursuant to rule 4-100(C) of the Rules of Professional Conduct.

For the first period for which such statement is required, the statement must be from a certified public accountant or other financial professional approved by the Office of Probation. For all subsequent periods for which such statement is required, the statement may be made by Respondent under penalty of perjury.

- b. If Respondent did not possess any client funds, property, or securities during the entire period covered by a quarterly or final report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period.

(7) Other:

Respondent also made five deposits into his CTA that were legal fees and did not promptly withdraw them. These deposits are as follows:

<u>Date of Deposit</u>	<u>AMT. DEPOSITED</u>	<u>FORM OF DEPOSIT</u>
February 16, 2015	\$22,396.66	check
April 6, 2015	\$9,603.34	check
November 4, 2015	\$5001.00	check
November 27, 2015	\$76,246.91	check
January 12, 2016	\$66,150.00	check

CONCLUSIONS OF LAW:

4. By issuing three checks drawn upon his CTA when respondent should have known that there were insufficient funds in the CTA to pay them, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.
5. By making five deposits into his CTA that were legal fees and not promptly withdrawing them, respondent commingled personal funds in a client trust account in willful violation of former rule 4-100 of the Rules of Professional Conduct.

Case No. 17-O-01825 (Complainant: California Department of Health Services)

6. Lisa Gardenhire hired respondent on July 11, 2012, to represent her in a personal injury action after Gardenhire suffered injuries in a vehicle accident on March 6, 2012. Respondent filed a lawsuit on behalf of Gardenhire in Mendocino County Superior Court, *Gardenhire v. Posey et al.*, Case No. SCUk-CVPM-14-63672.
7. Respondent negotiated a settlement in which Gardenhire agreed, on or about April 21, 2016, to settle her claims for \$20,000 to be paid by third party insurer Farmers Insurance. Gardenhire was a Medi-Cal recipient.
8. On October 7, 2016, Farmers issued a check for \$4,929.47 made out to California Department of Health Care Services (DHCS) to satisfy its lien and delivered the check to respondent. Farmers issued a second check for \$15,070.53 made out to respondent and Gardenhire. Respondent deposited this check into his CTA on October 17, 2016.
9. Gardenhire emailed respondent on December 20, 2016, asking if she would receive any funds from the settlement, and when. He replied that Medi-Cal wanted a big chunk of her settlement and that he would argue for a reduction in their lien.

10. Respondent told Gardenhire that he would continue to negotiate with DHCS to obtain a reduction in the lien amount. He provided DHCS evidence that the treatment Gardenhire received addressed preexisting conditions. Based on this evidence, DHCS sent respondent a refund check of \$4,829.47 dated November 29, 2017, to relay to Gardenhire, which was a full refund minus a \$100 processing fee. Respondent gave this check to Gardenhire on or around January 12, 2018, after one failed attempt to deliver in early December.
11. Respondent's January 12, 2018, transmittal letter indicated that he would send a finalized Case Disbursement under separate cover "so that we can disburse the remainder of your settlement funds." Thereafter, respondent did not disburse additional funds or account for the funds until October 24, 2018.
12. Based on respondent's fee agreement with Gardenhire, respondent was entitled to a fee of 40 percent of the gross settlement, as well as costs of \$2,141.60 (\$10,101.60). Gardenhire was entitled to \$9,798.40. Subtracting respondent's share from the total \$20,000 settlement, and accounting for the returned check from DHCS, which respondent gave to Gardenhire, there was a balance of approximately \$4,968.93, which respondent should have distributed to Gardenhire or her remaining lienholders.
13. During the State Bar's investigation, respondent was asked to provide the required client trust account ledger cards, and monthly trust account journals and reconciliations. Respondent replied that he did not have these documents.
14. On October 18, 2018, respondent realized he had not paid Gardenhire or her lienholders. On October 24, 2018, he issued a Case Disbursement memo and checks to Gardenhire and the lienholders: \$1,100 to Gardenhire; \$470 to Grant & Weber; \$1,942 to Rash Curtis & Associates; and \$1,200 to MAPRE Insurance.

CONCLUSIONS OF LAW:

15. By failing to pay Gardenhire and her lienholders the remaining settlement funds between November 29, 2017, and October 24, 2018, respondent breached his fiduciary duties to his client and her lienholders in willful violation of Business and Professions Code, section 6068(a).
16. By failing to account for the remaining settlement funds between November 29, 2017 and October 24, 2018, respondent failed to render appropriate accounts to Gardenhire in willful violation of former rule 4-100(B)(3) of the Rules of Professional Conduct.
17. By failing to maintain client trust account ledger cards, and monthly trust account journals and reconciliations for his CTA, respondent failed to maintain complete records of all funds of his client in willful violation of former rule 4-100(B)(3) of the Rules of Professional Conduct.

DISMISSALS

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

Case No.	Count	Alleged Violation
16-O-11368	Two	Former Rule 4-100(A), Rules of Professional Conduct [Failure to Maintain Client Funds in Trust Account]
17-O-01825	Four	Former Rule 4-100(B)(4), Rules of Professional Conduct [Failure to Pay Client Funds Promptly]

AGGRAVATING CIRCUMSTANCES

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent's failure to promptly pay Gardenhire and her lienholders, failure to account, failure to maintain proper trust account records, commingling, and issuance of checks without sufficient funds in his CTA constitute multiple acts of misconduct.

MITIGATING CIRCUMSTANCES

No Prior Record of Discipline: Respondent was admitted to the State Bar in June of 1991, and had practiced law with no prior discipline for 24 years at the time he engaged in misconduct in this matter. Respondent's lack of a prior record over twenty-four years of practice before the misconduct began is entitled to significant weight in mitigation. ((*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious, long-term discipline-free practice is most relevant where misconduct is aberrational].)

Pre-Trial 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 Spaitth* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

Good Character: Respondent has presented six character letters from attorneys, a real estate broker, and his wife, who state that they have known him for many years, most of them since 1985, and attesting to his good character. The declarants are all aware of the charges against him. (*In re Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591-592 [significant mitigation for good character testimony of three witnesses--testimony of acquaintances, neighbors, friends, associates, employers, and family members on the issue of good character, with reference to their observation of the respondent's daily conduct and mode of living, is entitled to great weight].)

Community Service: Respondent has served on five non-profit boards, including serving as President of one of them. Respondent also volunteered in local schools, and coached sports. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359.

Porter v. State Bar (1990) 52 Cal.3d 518, 529 [civic service and charitable work can be mitigation as evidence of good character].)

Remorse/Remedial Steps: Respondent acknowledges that, at the time his misconduct occurred, he was overwhelmed in his practice because three of his employees were terminated for not performing their job duties adequately. Respondent took on the work of the practice himself and now realizes that he should have obtained help with his practice sooner. Since then, he has given up his volunteer work so he can focus on his practice. He also hired a receptionist and uses contract attorneys to assist with court appearances. He is looking into hiring additional help to support his practice. He went to the State Bar's Client Trust Accounting school during the State Bar's investigation when he realized that he had been mishandling his trust account. (*Ainsworth v. State Bar* (1988) 46 Cal.3d 1218, 1228-1229; *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct Rptr. 404, 416-417 [remedial steps/assisted by other attorneys as mitigation].)

AUTHORITIES SUPPORTING DISCIPLINE

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

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.) In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In 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 failed to maintain appropriate CTA records, failed to timely pay settlement money to his client and her lienholders, failed to provide an accounting when requested, issued three NSF checks, and commingled money in his trust account. Standard 1.7(a) requires that where a respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

The most severe sanction applicable to respondent’s misconduct is found in standard 2.11, which provides that disbarment or an actual suspension is the presumed sanction for an act of moral turpitude, with the degree of sanction dependent upon the magnitude of the misconduct, the extent of harm to the victim, the impact on the administration of justice, if any, and the extent to which the misconduct related to the member’s practice of law. The gravamen of respondent’s misconduct is his mishandling of funds in his CTA and commingling. Standard 2.2(a) applies to this misconduct and provides that “actual suspension of three months is the presumed sanction for commingling or failure to promptly pay out entrusted funds.” Given standard 2.2(a)’s presumption, a three month actual suspension is appropriate discipline for respondent’s multiple acts of misconduct, which include commingling, issuance of NSF checks, failing to maintain funds in his CTA, breach of fiduciary duty to his client and her lienholders for failing to promptly pay settlement funds, failure to account, and failure to maintain required CTA records. Case law also supports this level of discipline. (See *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420 [90-day suspension pursuant to former std. 2.2(b) for misuse of trust account and issuance of NSF checks constituting moral turpitude for attorney with no prior discipline, aggravated by indifference; *Kelly v. State Bar* (1991) 53 Cal.3d 509 [120-day suspension for misconduct in two client matters, including commingling, failing to deposit client funds in trust, misappropriation, and failure to promptly pay, mitigated by 13 years of practice with no prior discipline].) Respondent’s misconduct in commingling and issuance of NSF checks is similar to the misconduct in *McKiernan*, where respondent also commingled both personal and non-client funds and failed to keep appropriate records. The misconduct in *Kelly* is more egregious than respondent’s misconduct because it also includes misappropriation. On balance, a 90-day actual suspension is supported by both the standards and case law, and is consistent with the purposes of attorney discipline: 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.

COSTS OF DISCIPLINARY PROCEEDINGS.

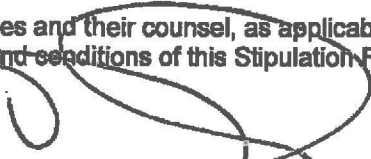

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of January 7, 2019, the prosecution costs in this matter are \$3,857. Respondent further acknowledges that should this stipulation be rejected or should relief from this stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: DAVID REY SILVA	Case Number(s): 16-O-11358 [17-O-01825]
--------------------------------------	--

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>2/11/19</u> Date	 Respondent's Signature	<u>David Rey Silva</u> Print Name
<u>February 11, 2019</u> Date	 Respondent's Counsel Signature	<u>Jonathan I. Arons</u> Print Name
<u>2/11/19</u> Date	<u>1959</u> Deputy Trial Counsel's Signature	<u>Dina E. Goldman</u> Print Name

(Do not write above this line.)

In the Matter of: DAVID REY SILVA	Case Number(s): 16-O-11358 (17-O-01825)
--------------------------------------	--

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 one of the Stipulation, in the lower right box, "Submitted to: Settlement Judge" is deleted and in its place is inserted "Submitted to: Assigned Judge."

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).)

Date 2/25/19 
MANJARI CHAWLA
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 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 San Francisco, on February 25, 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:

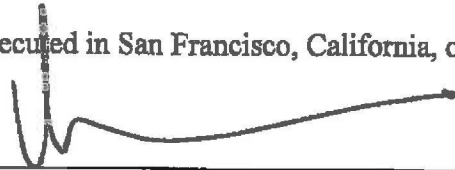
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JONATHAN ARONS
LAW OFC JONATHAN I. ARONS
100 BUSH STREET #918
SAN FRANCISCO, CA 94104

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

Dina E. Goldman, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 25, 2019.



Vincent Au
Court Specialist
State Bar Court