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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
<p>Counsel for the State Bar</p> <p>Hugh G. Radigan, Bar #94251 Senior Trial Counsel Kristina B. Ramos, Bar #309991 Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, California 90017 (213) 765-1304</p> <p>Bar #</p>	<p>Case Number(s): 16-O-17926-YDR 17-O-00740 17-O-01796 17-O-02348 17-O-03421 17-O-05697</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 24pt; font-weight: bold;">PUBLIC MATTER</p> <p style="text-align: center; font-size: 24pt; font-weight: bold;">FILED</p> <p style="text-align: center; font-size: 18pt; font-weight: bold;">MAR 22 2019</p> <p style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Jean Cha 801 South Figueroa Street 15th Floor at 801 Tower Los Angeles, California 90017</p> <p>Bar # 228137</p>	<p>(OGTC Case No. 18-O-16708 (Inv.)) SBC-19-0-30127</p>	
<p>In the Matter of: JIMMY SWINDER</p> <p>Bar # 288934</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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 **February 14, 2013**.
- (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 **25** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. It is recommended that (check one option only):
- Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.
 - Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. SELECT ONE of the costs must be paid with Respondent's membership fees for each of the following years:

If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs."
 - Costs are entirely waived.

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

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

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- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See pages 21-22.**
- (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 21.**
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution. **See page 22.**
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable. **See page 22.**
- (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.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pretrial Stipulation, see page 22.

D. Recommended Discipline:

- (1) **Actual Suspension:**

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

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

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

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

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

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

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

- Respondent must be suspended from the practice of law for a minimum of the first _____ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:

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

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

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

- Respondent must be suspended from the practice of law for a minimum of the first **18 months** 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>
Martir Villatoro	\$2,500	May 25, 2016
Valerie Carter	\$3,500	April 2, 2016
Albert Butterfield	\$3,600	January 14, 2016
Martin Espino-Garcia	\$500	October 14, 2016
Willie Madison	\$2,500	April 3, 2017
Leaster Goodwin	\$3,750	December 30, 2015
Harold Leslie Bradley	\$3,500	October 5, 2015

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

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

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

- Respondent must be suspended from the practice of law for a minimum for the first _____ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:
 - a. Respondent makes restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____ (or reimburses the Client Security Fund to the extent of any payment from the 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 Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

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

or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

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

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

is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

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

For purposes of compliance with rule 9.20(a), the operative date for identification of “clients being represented in pending matters” and others to be notified is the filing date of the Supreme Court order, not any later “effective” date of the order. (*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: **Respondent must furnish satisfactory proof of compliance with each requirement below to the Office of Probation within 30 days of the effective date of the Supreme Court order imposing discipline in this matter.**

Case No. 16-O-17926 (Complainant: Martir Villatoro):

1. Respondent must provide an accounting to Martir Villatoro.

Case No. 17-O-02348 (Complainant: Martin Espino-Garcia):

1. Respondent must provide an accounting to Martin Espino-Garcia.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:

JIMMY SWINDER

CASE NUMBERS:

16-O-17926-YDR, 17-O-00740, 17-O-01796, 17-O-02348,
17-O-03421, 17-O-05697, (OCTC Case No. 18-O-16708
(Inv.))

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 16-O-17926 (Complainant: Martir Villatoro)

FACTS:

1. On August 5, 2015, respondent incorporated Brighton Legal Group, PC, by filing articles of incorporation with the California Secretary of State. The business was described as a law firm. On October 12, 2016, a statement of information was filed, identifying respondent as all named officers and directors. Respondent was the only attorney for Brighton.
2. On February 15, 2016, Martir Villatoro hired respondent via Brighton Legal Group to represent him in immigration removal proceedings, namely *In the Matter of Martir Cesar Villatoro*, A074 643 263.
3. On February 15, 2016 at respondent's office, respondent and Villatoro executed a fee agreement whereby Villatoro agreed to pay respondent a flat fee of \$5,000, to be paid in full by the close of the case.
4. Villatoro paid respondent \$2,500 in three payments: (1) \$1,000 cash payment to respondent made at respondent's office on February 15, 2016; (2) \$500 cash payment directly deposited into respondent's Chase bank account at respondent's request on March 17, 2016; and (3) \$1,000 cash payment made directly to respondent at court on May 25, 2016. Villatoro made the third payment after being informed that respondent would not appear in court on Villatoro's behalf on May 25, 2016 if Villatoro did not make an additional payment.
5. Respondent made his first and only appearance on behalf of Villatoro at the court hearing on May 25, 2016. At that time, respondent filed a notice of entry of appearance on behalf of Villatoro.
6. At the court hearing on May 25, 2016, respondent represented to the court that he had only recently been retained and on that basis secured a continuance of the hearing to September 1, 2016.
7. Thereafter, respondent did not file any documents or perform any work on Villatoro's case.

8. At the court hearing on September 1, 2016, respondent failed to appear, leaving Villatoro to appear by himself. Respondent was still Villatoro's attorney of record in the immigration proceedings.

9. On September 1, 2016, Villatoro went to respondent's office to discuss respondent's failure to appear at the hearing, but respondent was no longer at that address. Respondent had changed his address with State Bar records on May 20, 2016, however, respondent failed to give Villatoro notice regarding the address change.

10. Thereafter, Villatoro attempted to contact respondent several times by phone. Villatoro called respondent's office approximately 8-10 times and left voicemail messages. Respondent did not return Villatoro's calls.

11. In a voicemail to respondent, Villatoro demanded a refund of the \$2,500 he paid. Respondent did not promptly refund to Villatoro any of the \$2,500 fee paid.

12. To date, respondent has not provided Villatoro with an accounting.

13. According to respondent, he is not in possession of a client file to return to Villatoro.

14. Villatoro subsequently retained new counsel to complete his pending immigration matter.

15. Villatoro filed a complaint with the State Bar of California. Letters from the State Bar inviting respondent's participation in this investigation, dated January 17, 2017, January 24, 2017, and June 13, 2017, directed to respondent were received by respondent. Respondent did not respond to the letters.

CONCLUSIONS OF LAW:

16. By failing to appear at Villatoro's scheduled Immigration Court hearing on September 1, 2016 or provide any other legal services for Villatoro, respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, former rule 3-110(A).

17. By failing to appear at Villatoro's scheduled Immigration Court hearing on September 1, 2016 and thereafter failing to inform Villatoro that respondent was withdrawing from employment, respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to Villatoro in willful violation of Rules of Professional Conduct, former rule 3-700(A)(2).

18. By failing to refund promptly, upon respondent's termination of employment on September 1, 2016, any part of the \$2,500 in unearned fees to Villatoro, respondent willfully violated Rules of Professional Conduct, former rule 3-700(D)(2).

19. By failing to render an accounting to Villatoro for the \$2,500 paid in advanced legal fees upon respondent's termination on September 1, 2016, respondent willfully violated Rules of Professional Conduct, former rule 4-100(B)(3).

20. By failing to provide a substantive response to the State Bar's letters dated January 17, 2017, February 14, 2017, and June 13, 2017, requesting respondent's response to the allegations of misconduct being investigated in case no. 16-O-17926, respondent failed to cooperate and participate in a

disciplinary investigation pending against respondent in willful violation of Business and Professions Code, section 6068(i).

21. By failing to respond promptly to eight to ten telephonic, reasonable status inquiries made by Villatoro between August 15, 2016 through September 2016, that respondent received in a matter in which respondent had agreed to provide legal services, respondent willfully violated Business and Professions Code, section 6068(m).

22. By failing to inform Villatoro that respondent had closed down his office, effective September 2016, without advising Villatoro of his new address, respondent failed to keep respondent's client reasonably informed 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).

Case No. 17-O-00740 (Complainant: Valerie Carter)

23. On December 29, 2014, respondent incorporated Camden Legal Group, PC by filing articles of incorporation with the California Secretary of State. The business was described as a law firm. On March 16, 2015, respondent additionally filed a statement of information, identifying himself as all named officers and directors. Respondent was the only attorney for Camden.

24. On December 1, 2015, Valerie Carter entered an agreement with respondent via Camden Legal Group to pursue a home loan modification on her California residence.

25. The objectives recited in the agreement included drafting a demand letter regarding the terms of the loan on Carter's residence to the lender, Wells Fargo; a written request to modify the terms of the loan; and drafting a complaint regarding the property and the terms of the loan.

26. Carter was charged \$3,500 for this agreement, payable over five successive months at \$700. Carter complied with the scheduled payments. Carter was double billed on one occasion and the overcharge not refunded.

27. The authorization signed by Carter indicated that Camden was to act on Carter's behalf "to find resolution for [her] mortgage problems." Carter understood that Camden would be pursuing a loan modification on her behalf.

28. Nowhere within the subpoenaed records from the lender, Wells Fargo, referencing Carter's loan modification application, does respondent's name appear. The case analysis, financial analysis, package preparation, calls to the lender, negotiation and follow-up were all apparently handled by non-attorney staff, leaving respondent entirely uninvolved with the case.

29. The loan modification was denied in September 2016. Ultimately, Carter's home was foreclosed upon and sold via short sale.

30. Respondent did not promptly refund to Carter any of the \$3,500 fee paid.

31. Carter filed a complaint with the State Bar of California. Letters from the State Bar inviting respondent's participation in this investigation, dated June 12, 2017 and June 30, 2017, directed to his respondent have not been responded to by respondent to date.

CONCLUSIONS OF LAW:

32. By knowingly allowing the employee staff of Camden Legal Group, PC, who are not licensed to practice law in California, to provide legal advice to Carter and legal services related to loan modification services from December 1, 2015 through September 2016, respondent aided the employee staff in the unauthorized practice of law in willful violation of Rules of Professional Conduct, rule 1-300(A).

33. By entering into an agreement for, charging, and collecting from Carter a fee of \$4,200 between December 1, 2015 and April 2, 2016 to perform legal services in the form of a loan modification that was illegal because the services were not fully performed prior to acceptance of the fee, respondent violated Civil Code section 2944.7 in willful violation of the Rules of Professional Conduct, rule 4-200(A).

34. By agreeing to negotiate and perform a mortgage loan modification or other mortgage loan forbearance for a fee for Carter on December 1, 2015, and thereafter collecting \$4,200 from Carter before respondent had fully performed each and every service respondent had been contracted to perform in violation of Civil Code section 2944.7, respondent failed to support the laws of this State in willful violation of Business and Professions Code section 6068(a).

35. By failing to provide a substantive response to the State Bar's letters dated June 12, 2017 and June 30, 2017, requesting respondent's response to the allegations of misconduct being investigated in case no. 17-O-00740, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent in willful violation of Business and Professions Code, section 6068(i).

36. By negotiating, arranging, or offering to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee paid by borrower and client, Carter, on December 1, 2015, in advance of any service, and thereafter, entering into a fee agreement with Carter without providing Carter, prior to entering into that agreement, with a separate statement required by Civil Code section 2944.6(a), respondent willfully violated Business and Professions Code, section 6106.3(a).

37. By agreeing to negotiate a mortgage loan modification or other mortgage loan forbearance for a fee for Carter on December 1, 2015, and thereafter, receiving \$4,200 from Carter between December 1, 2015 and April 2, 2016, before respondent had fully performed each and every service respondent had been contracted to perform or represented to Carter that respondent would perform, respondent violated Civil Code section 2944.7 in willful violation of former Business and Professions Code, section 6106.3 (effective from October 11, 2009, until January 1, 2017).

Case No. 17-O-01796 (Complainant: Albert Butterfield)

38. On December 29, 2014, respondent incorporated Camden Legal Group, PC by filing articles of incorporation with the California Secretary of State. The business was described as a law firm. On March 16, 2015, respondent additionally filed a statement of information, identifying himself as all named officers and directors. Respondent was the only attorney for Camden.

39. On July 15, 2015, Albert Butterfield entered an agreement with respondent via Camden Legal Group to pursue a home loan modification on his Utah residence.

40. Utah Rules of Professional Conduct, rule 5.5 provides that a lawyer who is not admitted to practice in Utah shall not practice law in Utah except as authorized by the Rules or other law.

41. Respondent is not licensed to practice law in Utah nor authorized by any rule or other law.

42. The objectives recited in the agreement included to draft a demand letter regarding the terms of the loan on Butterfield's residence to the lender, Caliber Home Loans, a written request relating to the loan, and drafting a complaint regarding the property and the terms of the loan.

43. Butterfield was charged \$3,600 for this agreement, payable over six successive months at \$600. Butterfield complied with the scheduled payments.

44. The authorization signed by Butterfield indicated that Camden was to act on Butterfield's behalf "to find resolution for [his] mortgage problems." Butterfield understood that Camden would be pursuing a loan modification on his behalf.

45. Respondent did not perform any legal services on behalf of Butterfield.

46. On February 1, 2017, Butterfield terminated Camden and demanded a full refund of the \$3,600 he paid. Respondent did not promptly refund to Butterfield any of the \$3,600 fee paid.

47. Butterfield filed a complaint with the State Bar of California. Letters from the State Bar inviting respondent's participation in this investigation dated June 12, 2017, July 3, 2017 and August 4, 2017 directed to respondent have not been responded to by respondent to date.

CONCLUSIONS OF LAW:

48. By agreeing to perform legal services in the form of loan modification on behalf of Butterfield in connection with his property in Utah, when to do so was in violation of the regulations of the profession in Utah, namely Utah Rules of Professional Conduct, rule 5.5, respondent practice law in Utah from July 15, 2015 through February 1, 2017 in willful violation of the Rules of Professional Conduct, former rule 1-300(B).

49. By entering into an agreement for, charging, and collecting from Butterfield a fee of \$3,600 on July 15, 2015 to perform legal services in the form of a loan modification that was illegal because the services were performed with respect to a property located in Utah, a jurisdiction where respondent was not admitted to practice, respondent willfully violated the Rules of Professional Conduct, rule 4-200(A).

50. By failing to provide a substantive response to the State Bar's letters dated June 12, 2017, July 3, 2017 and August 4, 2017, requesting respondent's response to the allegations of misconduct being investigated in case no. 17-O-01796, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent in willful violation of Business and Professions Code, section 6068(i).

Case No. 17-O-02348 (Complainant: Martin Espino-Garcia)

51. On August 5, 2015, respondent incorporated Brighton Legal Group, PC, by filing articles of incorporation with the California Secretary of State. The business was described as a law firm. On

October 12, 2016, a statement of information was filed, identifying respondent as all officers and directors. Respondent was the only attorney for Brighton.

52. On October 14, 2016, in response to a Christian radio station advertisement, Martin Espino-Garcia hired respondent via Brighton to file an I-130 petition, Petition for Alien Relative, through his U.S. citizen wife.

53. Brighton and Espino-Garcia executed a fee agreement whereby Espino-Garcia agreed to pay respondent a flat fee of \$5,000 for his legal services. Espino-Garcia paid respondent \$500 on that same day and agreed to make monthly payments of \$75 thereafter.

54. On October 14, 2016, Espino-Garcia executed a form G-28 with USCIS, identifying respondent as his attorney of record.

55. On November 16, 2016 and December 5, 2016, Brighton's staff informed Espino-Garcia via text messages that respondent would be providing him with a bill; however, Espino-Garcia never received any bill from respondent.

56. Thereafter, Espino-Garcia tried to contact respondent's office several times by phone and left voicemail messages, but no one responded to his calls until January 11, 2017.

57. Respondent did not file the I-130 petition or perform any work related to the petition.

58. On January 11, 2017, Espino-Garcia had his first and only direct contact with respondent via telephone. During that call, Espino-Garcia terminated respondent's employment.

59. Espino-Garcia demanded a refund of the \$500 that he paid, an accounting, and a return of his client file. According to respondent, he is not in possession of a client file to return to Espino-Garcia.

60. Respondent did not promptly refund to Espino-Garcia any of the \$500 fee paid.

61. To date, respondent has not provided an accounting to Espino-Garcia or returned his client file.

62. Espino-Garcia subsequently retained new counsel, who completed and filed Espino-Garcia's I-130 petition in April 2017.

63. Espino-Garcia filed a complaint with the State Bar of California. Letters from the State Bar inviting respondent's participation in this investigation, dated June 30, 2017, July 6, 2017, and September 21, 2017, directed to respondent have not been responded to by respondent to date.

CONCLUSIONS OF LAW:

64. By failing to file Espino-Garcia's I-130 petition or anything on behalf of Espino-Garcia, respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, former rule 3-110(A).

65. By failing to release promptly, upon respondent's termination of employment on January 11, 2017, to respondent's client, Espino-Garcia, all of Espino-Garcia's papers and property following

Espino-Garcia request for the client file on January 11, 2017, respondent willfully violated Rules of Professional Conduct, former rule 3-700(D)(1).

66. By failing to refund promptly, upon respondent's termination of employment on January 11, 2017, any part of the \$500 in unearned fees to Espino-Garcia, respondent willfully violated Rules of Professional Conduct, former rule 3-700(D)(2).

67. By failing to render an accounting to Espino-Garcia for the \$500 paid in advanced legal fees upon respondent's termination on January 11, 2017, respondent willfully violated Rules of Professional Conduct, former rule 4-100(B)(3).

68. By failing to provide a substantive response to the State Bar's letters dated June 30, 2017, July 6, 2017, and September 21, 2017, requesting respondent's response to the allegations of misconduct being investigated in case no. 17-O-02348, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent in willful violation of Business and Professions Code, section 6068(i).

69. By failing to respond promptly to several telephonic, reasonable status inquiries made by Espino-Garcia between December 5, 2016 through January 11, 2017, that respondent received in a matter in which respondent had agreed to provide legal services, respondent willfully violated Business and Professions Code, section 6068(m).

Case No. 17-O-03421 (Complainant: Willie Madison)

70. On December 22, 2015, respondent incorporated Westwood Legal by filing articles of incorporation with the California Secretary of State. The business was described as "document preparation services." Respondent was the only attorney for Westwood.

71. On November 29, 2016, Willie Madison entered a service agreement with respondent via Westwood Legal to pursue a loan modification on his Mississippi residence.

72. Mississippi Rules of Professional Conduct, rule 5.5 provides that a lawyer who is not admitted to practice in Mississippi shall not practice law in Mississippi except as authorized by the Rules or other law.

73. Respondent is not licensed to practice law in Mississippi nor authorized by any rule or other law.

74. The objectives recited in the agreement included drafting a demand letter regarding the terms of the loan on Madison's residence to the lender, Faye Servicing; a written request to modify the terms of the loan; and drafting a complaint regarding the property and the terms of the loan.

75. Madison was charged \$4,000 for this agreement, payable over eight successive months at \$500. Madison paid \$2,500 towards the scheduled payments.

76. Madison understood that Westwood would be pursuing a loan modification on his behalf.

77. Subpoenaed records from the lender, Faye Servicing, indicated a loan modification package on behalf of Madison was submitted for their review on February 24, 2017 by Camden Legal Group, of

which respondent was an officer and director. The case analysis, financial analysis, package preparation, calls to the lender, negotiation and follow-up were all apparently handled by non-attorney staff, leaving respondent entirely uninvolved with the case.

78. When Madison's home went into foreclosure, he stopped making payments to Westwood and demanded a full refund of the \$2,500 he paid.

79. To date, respondent has not refunded to Madison any of the \$2,500 paid.

80. Madison filed a complaint with the State Bar of California. Letters from the State Bar inviting respondent's participation in this investigation dated December 14, 2017 and January 2, 2018, directed to respondent have not been responded to by respondent to date.

CONCLUSIONS OF LAW:

81. By knowingly allowing the employee staff of Westwood Legal, who are not licensed to practice law in California, to provide legal advice to Madison and legal services related to loan modification services from November 29, 2016 through February 2017, respondent aided the employee staff in the unauthorized practice of law in willful violation of Rules of Professional Conduct, former rule 1-300(A).

82. By agreeing to perform legal services in the form of loan modification on behalf of Madison in connection with his property in Mississippi, when to do so was in violation of the regulations of the profession in Mississippi, namely Mississippi Rules of Professional Conduct, rule 5.5, respondent practiced law in Mississippi from November 29, 2016 through February 24, 2017 in willful violation of the Rules of Professional Conduct, former rule 1-300(B).

83. By entering into an agreement for, charging, and collecting from Butterfield a fee of \$2,500 on November 29, 2016 to perform legal services in the form of a loan modification that was illegal because the services were performed with respect to a property located in Mississippi, a jurisdiction where respondent was not admitted to practice, respondent willfully violated the Rules of Professional Conduct, former rule 4-200(A).

84. By failing to provide a substantive response to the State Bar's letters dated December 14, 2017, and January 2, 2018, requesting respondent's response to the allegations of misconduct being investigated in case no. 17-O-03421, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent in willful violation of Business and Professions Code, section 6068(i).

Case No. 17-O-05697 (Complainant: Leaster Goodwin)

85. On December 29, 2014, respondent incorporated Camden Legal Group, PC by filing articles of incorporation with the California Secretary of State. The business was described as a law firm. On March 16, 2015, respondent additionally filed a statement of information, identifying himself as all named officers and directors. Respondent was the only attorney for Camden.

86. In or about March 2015, Leaster Goodwin, a resident of Wisconsin, received an unsolicited phone call from a gentleman associated with Camden Legal Group promising he could lower Goodwin's home loan mortgage rate with Caliber Home Loans.

87. Wisconsin Rules of Professional Conduct, rule 5.5 provides that a lawyer who is not admitted to practice in Wisconsin shall not practice law in Wisconsin except as authorized by the Rules or other law.

88. Respondent is not licensed to practice law in Wisconsin nor authorized by any rule or other law.

89. The objective recited during their phone call was to secure a loan modification in order to help Goodwin avoid bankruptcy.

90. Camden furnished Goodwin with a retainer agreement and a payment plan addendum reciting a fee payment schedule of \$750 per month commencing August 31, 2015 running through December 30, 2015.

91. Camden also furnished Goodwin with an ACH payment authorization form allowing for automatic payments from Goodwin's bank in compliance with the terms set forth in the addendum.

92. Also submitted was a general change endorsement replacing Goodwin's residence address with Camden's business address dated September 15, 2015.

93. Goodwin executed all of these above referred documents and returned them to Camden.

94. The retainer agreement services included drafting a demand letter regarding the terms of the loan on Goodwin's residence to the lender, Caliber Home Loans; a written request to modify the terms of the loan; and drafting a complaint regarding the property and the terms of the loan.

95. Goodwin was charged \$3,750 for this agreement, payable over six successive months at \$750.

96. Goodwin complied with the scheduled payments.

97. Acting on the advice of Camden, Goodwin stopped his mortgage payments and stopped contact with his lender.

98. The authorization signed by Goodwin and dated September 1, 2015, indicated that Camden was to act on Goodwin's behalf "to find resolution for [his] mortgage problems." Goodwin understood that Camden would be pursuing a loan modification on his behalf.

99. Subpoenaed records from the lender, Caliber, indicate a loan modification package was submitted for their review on May 10, 2016. Nowhere within the subpoenaed records does respondent's name appear. The case analysis, financial analysis, package preparation, calls to the lender, negotiation and follow-up were all apparently handled by non-attorney staff, leaving respondent entirely uninvolved with the case.

100. Unbeknownst to Goodwin, Camden gave written notice to Caliber on July 25, 2016, that they no longer represented Goodwin.

101. Goodwin filed a complaint with the State Bar of California. Letters from the State Bar inviting respondent's participation in this investigation dated February 27, 2018, and March 20, 2018 directed to respondent have not been responded to by respondent to date.

102. To date, respondent has not refunded to Goodwin any of the \$3,750 fee paid.

CONCLUSIONS OF LAW:

103. By knowingly allowing the employee staff of Camden Legal Group, PC, who are not licensed to practice law in California, to provide legal advice to Goodwin and legal services related to loan modification services from August 31, 2015 through July 25, 2016, respondent aided the employee staff in the unauthorized practice of law in willful violation of Rules of Professional Conduct, former rule 1-300(A).

104. By agreeing to perform legal services in the form of loan modification on behalf of Goodwin in connection with his property in Wisconsin, when to do so was in violation of the regulations of the profession in Wisconsin, namely Wisconsin Rules of Professional Conduct, rule 5.5, respondent practiced law in Wisconsin from August 31, 2015 through July 25, 2016 in willful violation of the Rules of Professional Conduct, former rule 1-300(B).

105. By entering into an agreement for, charging, and collecting from Goodwin a fee of \$3,750 on August 31, 2015 to perform legal services in the form of a loan modification that was illegal because the services were performed with respect to a property located in Wisconsin, a jurisdiction where respondent was not admitted to practice, respondent willfully violated the Rules of Professional Conduct, former rule 4-200(A).

106. By failing to provide a substantive response to the State Bar's letters dated February 27, 2018 and March 20, 2018, requesting respondent's response to the allegations of misconduct being investigated in case no. 17-O-05697, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent in willful violation of Business and Professions Code, section 6068(i).

OCTC Case No. 18-O-16708 (Inv.) (Complainant: Harold Leslie Bradley)

107. On December 29, 2014, respondent incorporated Camden Legal Group, PC by filing articles of incorporation with the California Secretary of State. The business was described as a law firm. On March 16, 2015, respondent additionally filed a statement of information, identifying himself as all named officers and directors. Respondent was the only attorney for Camden.

108. On May 19, 2015, Harold Leslie Bradley entered into an agreement with respondent via Camden to pursue a loan modification on his Oregon residence.

109. Oregon Rules of Professional Conduct, rule 5.5 provides that a lawyer who is not admitted to practice in Oregon shall not practice law in Oregon except as authorized by the Rules or other law.

110. Respondent is not licensed to practice law in Oregon nor authorized by any rule or other law.

111. The objectives recited in the agreement included to draft a demand letter regarding the terms of the loan on Bradley residence to his lender, a written request relating to the loan, and drafting a complaint regarding the property and the terms of the loan.

112. Bradley was charged \$3,500 for this agreement, payable over five successive months. Bradley complied with the scheduled payments.

113. Bradley understood that Camden would be pursuing a loan modification on his behalf.

114. In August 2016, respondent sent Bradley a civil complaint against Bradley's mortgage company. Respondent instructed him to file it in Oregon.

115. In December 2016, Bradley was instructed by respondent's office to hire a lawyer in Oregon. Only then did Bradley learn that respondent was not licensed to practice law in Oregon.

116. Bradley was left to pursue the loan modification by himself.

117. To date, respondent has not refunded Bradley the \$3,500 fee.

CONCLUSIONS OF LAW:

118. By agreeing to perform legal services in the form of loan modification on behalf of Bradley in connection with his property in Oregon, when to do so was in violation of the regulations of the profession in Oregon, namely Oregon Rules of Professional Conduct, rule 5.5, respondent practiced law in Oregon from May 19, 2015 through December 2016 in willful violation of the Rules of Professional Conduct, former rule 1-300(B).

119. By entering into an agreement for, charging, and collecting from Bradley a fee of \$3,500 between May 19, 2015 and October 5, 2015 to perform legal services in the form of a loan modification that was illegal because the services were performed with respect to a property located in Oregon, a jurisdiction where respondent was not admitted to practice, respondent willfully violated the Rules of Professional Conduct, former rule 4-200(A).

120. By failing to refund promptly, upon respondent's termination of employment in December 2016, any part of the \$3,500 in unearned fees to Bradley, respondent willfully violated Rules of Professional Conduct, former rule 3-700(D)(2).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent committed multiple acts of misconduct, specifically multiple violations of Rules of Professional Conduct, rule 1-300(B) [upl in foreign jurisdiction], 3-110(A) [failure to perform], rule 4-100(B)(3) [failure to account], 3-700(A)(2) [improper withdrawal from employment], rule 3-700(D)(1) [failure to provide client file], rule 3-700(D)(2) [failure to return unearned fees] and rule 4-200(A) [illegal fee], as well as Business and Professions Code, sections 6068(a) [failure to support laws], 6068(i) [failure to cooperate in State Bar investigation] and 6068(m) [failure to communicate].

Significant Harm to Client, Public or Administration of Justice (Std. 1.5(j)): Respondent's failure to return unearned fees deprived both immigration clients of their funds, which is a direct harm to

the clients and an aggravating circumstance. Both clients who hired respondent for immigration-related legal services had to hire new counsel at additional cost and expense and one client's petition was never filed. Similarly, the clients seeking loan modification services suffered the same fate. Neither accountings nor refunds have been forthcoming to financially vulnerable clients who could have better utilized those fees toward their existent obligations.

Failure to Make Restitution (Std. 1.5(m)): Respondent's failure to promptly pay restitution to all of his clients for unearned fees is an aggravating circumstance.

Highly Vulnerable Victim (Std. 1.5(n)): Respondent's clients were particularly vulnerable due to their uncertain immigration status, age and infirmity, and financially precarious home loan situations. Both clients seeking immigration-related services from respondent had limited English-language skills and relied on respondent's assurances and assistance in their efforts to stay in this country, especially one who was facing deportation.

MITIGATING CIRCUMSTANCES.

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. (See *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 Spaitth* (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].)

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 Silvertan* (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).)

Where multiple acts of misconduct are committed by respondent and the Standards specify different levels of discipline for each act, "the most severe sanction must be imposed." (Std. 1.7(a).) The most severe sanction applicable to respondent's misconduct in this matter is found in Standard 2.12(a), applicable to three counts of failure to comply with laws, which provides for disbarment or actual suspension for acts in violation of court orders, the attorney's oath or duties required of an attorney under Business and Professions Code section 6068(a).

In aggravation, the respondent committed thirty-three acts of misconduct in seven matters. The Review Court has considered multiple acts of misconduct as serious aggravation. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rprt. 498, .555.) In this case, the respondent failed to competently perform, failed to substantively communicate with his clients, failed to provide the client files and records, collected illegal fees, and practiced in jurisdictions where he is not admitted, while violating California laws.

The gravamen of the misconduct in the present matters consists of respondent's conduct in creating entities that purposefully preyed upon two highly vulnerable classes of clientele – immigrants seeking legal services for assistance with their immigration status and those in mortgage distress. Respondent created and marketed three separate and distinct business models, Brighton, Camden and Westwood, for the purposes of securing business from both classes of potential clients. In the course of performance, respondent failed to abide with California statutes regulating the provision of loan modification services. Respondent actively solicited loan modification business in foreign jurisdictions where respondent was not licensed to practice law and elevated profit above positive results for the clients. By allowing non-lawyers to negotiate loan modifications, respondent has aided and abetted the unauthorized practice of law. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rprt. 498, 520 [attorney aided and abetted UPL by relying upon non-attorneys to prepare and file client documents].) In the two involved immigration matters, virtually no services of value were performed while client inquiries were summarily ignored. By entering into this stipulation, respondent takes full responsibility for the consequences of failing to adequately manage his firms and the winding down of client matters before he moved on to full-time employment elsewhere.

Consideration of aggravation and mitigation must necessarily be included to determine the appropriate level of discipline, keeping in mind the reasons for discipline. No factors in mitigation apply in this case. On the contrary, it appears respondent has little respect for this entire process as evidenced by his willful failure to cooperate in any of these seven matters. The scope of misconduct, involving seven clients over a two year period, is serious, warranting actual suspension.

Respondent is charged with serious misconduct in four loan modification matters, which provided no positive modification relief while denying the clients the use of their money to address their mortgage related financial dilemma at a time when they were most vulnerable. Comparably, within the immigration matters, nothing meaningful was done to promote the client's objective and repeated inquiries for updated information were ignored. These multiple acts of misconduct coupled with the harm experienced to the clients, outweigh the non-existent mitigation and compel a significant actual suspension. A three year suspension, stayed, with three years of probation, with conditions including an actual suspension for the first 18 months, and requirements that respondent remain suspended until he complies with Std. 1.2(c)(1) at the end of his suspension, and until restitution is paid, he provides accountings to the complainants, and returns their client files, is appropriate. This level of discipline is

necessary to protect the public, to maintain respect for the profession and to not allow public confidence in the profession to be undermined. (See *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296, 306.)

COSTS OF DISCIPLINARY PROCEEDINGS.


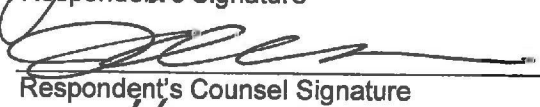

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of February 21, 2018, the discipline costs in this matter are approximately \$12,233. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: JIMMY SWINDER	Case Number(s): 16-O-17926-YDR 17-O-00740 17-O-01796 17-O-02348 17-O-03421 17-O-05697 (OCTC Case No. 18-O-16708 (Inv.))
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>3/13/19</u> Date	 Respondent's Signature	<u>Jimmy Swinder</u> Print Name
<u>3/13/19</u> Date	 Respondent's Counsel Signature	<u>Jean Cha</u> Print Name
<u>3/13/19</u> Date	 Deputy Trial Counsel's Signature	<u>Kristina B. Ramos</u> Print Name

(Do not write above this line.)

In the Matter of: JIMMY SWINDER	Case Number(s): 16-O-17926-YDR 17-O-00740 17-O-01796 17-O-02348 17-O-03421 17-O-05697 OCTC Case No. 18-O-16708 (Inv.) SBC-19-O-30127
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ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

1. On page 14 of the Stipulation, at numbered paragraphs 32 and 33, line 4 and line 5, respectively, "former" is inserted before "rule".
2. On page 14 of the Stipulation, numbered paragraph 34 is deleted in its entirety. Section 6068, subdivision (a), is "a conduit by which attorneys may be charged and disciplined for violations of other specific laws which are not otherwise made disciplinable under the State Bar Act." (In the Matter of Lilley (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476, 487.) However, as Business and Professions Code section 6106.3 already makes such conduct disciplinable, and Respondent, in paragraph 37, stipulates to a violation of Business and Professions Code section 6106.3 which was in effect at the time, count 8 of the First Amended Notice of Disciplinary Charges (ANDC) (see paragraph 34 of the Stipulation) is dismissed. Furthermore, because count 8 in the ANDC cannot be modified to correct this error of law, count 8 of the ANDC is dismissed with prejudice.
3. The Stipulation provides on page 1, at paragraph A.(3), that "[a]ll proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation" Included in the caption is case No. 17-O-05697. However, the Stipulation does not address or dispose of count 3 of the Notice of Disciplinary Charges filed in case No. 17-O-05697. Accordingly, that count is dismissed without prejudice.
4. On page 21 of the Stipulation, numbered paragraph 120 is deleted in its entirety, as the fee was an illegal fee (see paragraph 119 [respondent stipulates to a violation of former rule 4-200(A)], not an unearned fee. Therefore, this charge is dismissed without prejudice.

(Do not write above this line.)

5. On page 23 of the Stipulation, fourth full paragraph, line 2, “No factors in mitigation apply in this case” is deleted, and in its place is inserted, “Only one factor in mitigation applies in this case (pretrial stipulation).”
6. On page 23 of the Stipulation, fifth full paragraph, line 6, “non-existent” is deleted, as respondent’s pretrial stipulation was acknowledged as a mitigating circumstance.
7. On page 23 of the Stipulation, fifth full paragraph, line 10, “and returns their client files” is deleted, as this requirement is not set forth in the Stipulation as a discipline recommendation or a probation condition.

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

March 22, 2019
Date

Rebecca Meyer Rosenberg
REBECCA MEYER ROSENBERG
Judge Pro Tem 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 Los Angeles, on March 22, 2019, I deposited a true copy of the following document(s):

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

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


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

JEAN CHA
MANNING & KASS, ELLROD, RAMIREZ, TRESTER
801 SOUTH FIGUEROA STREET
15TH FLOOR AT 801 TOWER
LOS ANGELES, CA 90017-3012

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

HUGH G. RADIGAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 22, 2019.



Mazie Yip
Court Specialist
State Bar Court