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

Counsel for the State Bar

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Bar # 262387

Case Number(s):

17-O-03824-MC

18-O-11658

~~18-O-15996 (inv)~~

SBC-19-0-30154

For Court use only

PUBLIC MATTER

FILED

APR 30 2019

**STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO**

In Pro Per Respondent

**Stephen Roy Girardot
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Bar # 164847

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Submitted to: **Settlement Judge**

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

ACTUAL SUSPENSION

PREVIOUS STIPULATION REJECTED

In the Matter of:

STEPHEN ROY GIRARDOT

Bar # 164847

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 8, 1993**.
- (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 **19** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

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- (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.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.

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- (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 page 15.**
- (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 15.**
- (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. **See page 15.**
- (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.

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- (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:

No Prior record of Discipline, see page 16.

Pretrial Stipulation, see page 16.

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 **60 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:**
- 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:

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- (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

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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

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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

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

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

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

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

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: STEPHEN ROY GIRARDOT

CASE NUMBER: 17-O-03824-MC, 18-O-11658, 18-O-15996 (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. 17-O-03824-MC (State Bar Investigation)

FACTS:

1. Respondent represented Maria Soto in a criminal matter in Kings County Superior Court. On November 22, 2016, the District Attorney offered Soto a plea agreement which required a restitution payment of \$3,900 to the victim, Faye Grisham.
2. On December 21, 2016, respondent appeared in court with Soto and informed the court that Soto gave him \$3,900 in cash for the restitution payment. Respondent told the court that he would take the cash, write a check to Grisham for \$3,900, and give the check to the District Attorney's Office.
3. On January 4, 2017, respondent wrote a check from his client trust account (CTA) at Bank of the West, Account #####4155, payable to Grisham for \$3,900, and gave the check to the District Attorney's Office. Respondent placed the cash that Soto gave him in an envelope in his desk drawer. Respondent failed to deposit the funds into his CTA. Respondent eventually forgot about the funds in his desk drawer, and the funds remained in his desk drawer for the next five months.
4. From January 4, 2017 to April 24, 2017, the check remained with the District Attorney's Office, while the office tried unsuccessfully to contact Grisham.
5. On March 3, 2017, respondent issued a check from his CTA to Peter Morgan in the amount of \$120. The payment was for repair to an office copier machine, a personal expense.
6. On April 25, 2017, the District Attorney's Office delivered respondent's CTA check from account #####4155 to Grisham.
7. On April 26, 2017, the balance of respondent's CTA fell to \$100.
8. On May 11, 2017, Grisham's son attempted to deposit the restitution check, but it was returned by the bank for insufficient funds because respondent's CTA had a balance of \$100. The bank notified the State Bar of the insufficient fund activity on respondent's CTA.

9. On June 1, 2017, the State Bar sent respondent a letter of inquiry requesting an explanation for the insufficient fund activity on his CTA. At that time, respondent remembered that Soto's funds were in his desk drawer. Respondent retrieved the funds from his desk and purchased a cashier's check payable to Grisham for \$3,900, which he gave to the District Attorney's Office for disbursement to Grisham.
10. On June 1, 2017, the District Attorney's Office hand-delivered the cashier's check to Grisham.

CONCLUSIONS OF LAW:

11. By failing to deposit the \$3,900 that respondent received from Soto into his CTA, and failing to maintain a sufficient balance in his CTA on behalf of Soto and Grisham, respondent failed to deposit and maintain client funds in his CTA in willful violation of former rule 4-100(A) of the Rules of Professional Conduct.
12. By paying \$120 from his CTA for copier repair, respondent paid a personal expense from his CTA in willful violation of former rule 4-100(A) of the Rules of Professional Conduct.

Case No. 18-O-11658 (Complainant: the Honorable Donna L. Tarter)

FACTS:

13. On March 18, 2014, Jaimen Guzman was arrested after a police officer saw him make a threatening gesture at rival gang members. There were two men with Guzman who fled the scene and were not detained. One of the men was a Davon Daughtry.
14. On March 20, 2014, Guzman was charged with three felonies: witness intimidation, criminal threats, and participation in a street gang. The charges included various enhancements including two prior strike convictions.
15. On March 27, 2014, respondent was appointed to represent Guzman in *People v. Jaimen Guzman*, Kings County Superior Court Case No. 14CM7156.
16. On August 4, 2014, the court held a trial confirmation hearing. Respondent moved to delay the trial on the grounds that he needed time to locate a witness named "Davon." Respondent told the court that he had just learned that day from Guzman that Davon was an important witness. Guzman only knew Davon by his first name. Respondent told the court that based on this new information from his client, he needed time to locate Davon, and the court found good cause to continue the trial.
17. In October 2014, an investigator for the District Attorney learned that Davon's last name was Daughtry. The D.A. investigator made attempts to locate Daughtry, but did not find an address for him. Daughtry called the D.A. investigator by telephone because he heard the D.A. investigator was looking for him. Daughtry told the D.A. investigator that he did not see anything and had nothing to say. The D.A. investigator reported this information to the prosecutor on October 8, 2014, who forwarded Daughtry's statement to respondent. The prosecutor did not provide an address for Daughtry, but she provided Daughtry's last name. Respondent failed to follow-up on this information, including failing to learn from the prosecutor

if Daughtry provided any additional information that could be used to locate him.

18. On November 10, 2014, the court held a Marsden hearing at Guzman's request. Guzman's primary complaint was that respondent had failed to locate and interview Daughtry as a potential witness. Respondent told the court that he had not been able to locate Daughtry, but that the prosecution had talked to Daughtry, and the prosecution would not be calling him as a witness. Respondent told the court that he had previously asked Guzman for Daughtry's address, and Guzman had told him "he's going to be here, don't worry about it."
19. Guzman told the court that he did not know Daughtry's address or last name, but he told respondent that Daughtry "lives down the street from me." Guzman told the court that Daughtry had told Guzman's mother that he would appear at trial.
20. The court asked respondent what Daughtry would say at trial, under a best case scenario. Respondent said that according to Guzman, Daughtry would say that the victims instigated the incident and Guzman did not threaten or intimidate anyone. The court denied the Marsden motion.
21. Between November 10, 2014, and December 8, 2014, respondent's investigator, Katie Akers, made limited effort to locate Daughtry. Akers performed a search on Facebook for Daughtry's name, and she performed an internet address search on Daughtry's name, which returned only one result, a 50-year-old male who did not match Daughtry's description. Akers did not contact that person, speak to Guzman's mother, or canvass the neighborhood where Guzman and Daughtry lived. Neither Akers nor respondent made any additional efforts to locate Daughtry or speak to him.
22. On December 8, 2014, the first day of trial, Guzman made a second Marsden motion, again based on respondent's failure to locate and interview Daughtry. Guzman acknowledged that he did not know Daughtry's address, but he believed that respondent's investigator could locate Daughtry based on the information he had provided. The court denied the motion and proceeded to trial. Daughtry did not testify at the trial.
23. After a four-day trial on December 8, 9, 10, and 11, 2014, Guzman was convicted of witness intimidation and participation in a street gang. He was acquitted of making criminal threats. The witness intimidation conviction qualified as a third-strike offense, and Guzman was sentenced to 36 years to life.
24. On August 25, 2017, the Fifth District Court of Appeal overturned the verdict. The Court of Appeal reversed the conviction for participation in a street gang based on insufficient evidence and held that double jeopardy barred retrial on that charge. The court conditionally reversed the conviction for witness intimidation and remanded the case back to the trial court to hold a new Marsden hearing and determine whether respondent made reasonable efforts to secure the attendance of Daughtry as a defense witness.
25. The Court of Appeal found that the trial court properly denied the first Marsden motion, but that respondent should have taken steps to locate Daughtry in the month between the first Marsden hearing and the second Marsden hearing at the start of trial. The court noted that Guzman's lack of cooperation with respondent did not absolve respondent of his duty to make a reasonable

effort to locate a potentially exculpatory witness, particularly when the prosecutor had located the witness and decided not to call him as a prosecution witness. The court noted that respondent learned at the first Marsden hearing that Daughtry lived “down the street” from Guzman, and that Guzman’s mother was in touch with Daughtry. Respondent could have used this information to attempt to locate Daughtry.

26. The Court of Appeal found that when Guzman raised the same complaint at the second Marsden hearing on the first day of trial, his complaints were “sufficient to raise a question about [respondent’s] effectiveness,” and warranted further questioning of respondent to determine whether he had provided effective assistance. Because the trial court did not ask respondent further questions to learn what efforts he had made since the first Marsden hearing to locate Daughtry, the trial court did not have sufficient information to rule on the second Marsden motion.
27. Based on the Court of Appeal order, the trial court held a new Marsden hearing over five days in December 2017 and January 2018. Multiple witnesses testified at the hearing, including Davon Daughtry. Daughtry testified that he “did not see anything,” but when questioned further by the court, he explained that he was with Guzman at the time of the incident, and he did not see Guzman do anything toward the victims. The court found this testimony to be potentially exculpatory, because Daughtry’s version of the incident was contrary to the victim’s testimony.
28. At the conclusion of the hearing, the court made the following findings: (1) respondent did not conduct a sufficient investigation to locate and interview Daughtry; (2) respondent provided ineffective assistance of counsel; and (3) the court’s error in not previously granting the Marsden motion caused harm to Guzman. The trial court reversed the conviction on witness intimidation and appointed Guzman new counsel for a new trial.

CONCLUSIONS OF LAW:

29. By failing to make sufficient attempts to locate and interview Davon Daughtry as a potential trial witness with potentially exculpatory evidence, respondent failed to perform legal services competently for his client, Jaimen Guzman, in willful violation of former rule 3-110(A) of the Rules of Professional Conduct.

Case No. 18-O-15996 (Complainant: Debra Mancini)

FACTS:

30. On August 12, 2016, Debra and Greg Mancini hired respondent to represent their son, Joel Mancini, in *People v. Joel Mancini*, Tulare County Superior Court Case No. VCF339327C. The Mancinis paid respondent \$8,000 in advanced fees for the representation. Respondent did not obtain informed written consent from the client, Joel Mancini, to receive compensation for the representation from someone other than the client.
31. The discovery provided by the prosecutor to respondent was approximately 5,000 pages and included approximately 40 hours of audio recordings and video surveillance. Respondent hired an investigator to review the discovery, who billed respondent \$2,562 for 51.25 hours of time

spent working on the case. Respondent also reviewed the discovery, appeared at two arraignment hearings, and met with Joel Mancini to discuss the case.

32. On September 6, 2016, the Mancinis terminated the representation and asked respondent for a return of unearned fees. Respondent told the Mancinis that he had earned the entire \$8,000 advance fee, but he failed to provide the Mancinis with an accounting of those funds.
33. On April 1, 2019, respondent provided the Mancinis with an accounting, which stated that he spent 48.25 hours on the case, thereby earning a fee of \$12,062.50.

CONCLUSIONS OF LAW:

34. By failing to render an accounting of the Mancinis' \$8,000 advance fee upon the termination of respondent's employment on September 6, 2016, respondent failed to render an appropriate accounting to a client regarding the client's funds, in willful violation of rule 1.15(d)(4) and former rule 4-100(B)(3) of the Rules of Professional Conduct.
35. By accepting \$8,000 from Debra and Greg Mancini as compensation for representing a client, Joel Mancini, without obtaining Joel Mancini's informed written consent to receive such compensation, respondent failed to obtain his client's informed written consent to receive compensation from one other than the client, in willful violation of former rule 3-310(F) of the Rules of Professional Conduct.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b).): Respondent committed five acts of misconduct in three client matters. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631 [three instances of misconduct constitute multiple acts of misconduct].)

Significant Harm (Std. 1.5(j)): Respondent's failure to perform in Guzman's case led to reversal of his conviction and retrial. This caused significant harm to the client and to the administration of justice, as the conviction was reversed for the conduct and the court is required to hold a second jury trial. (See *In the Matter of Gonzalez* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. ___, 2018 WL 6314657, [misconduct caused significant harm by delaying incarcerated client's proceeding], *In Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690 [failure to perform in criminal appeal caused significant harm to client by leaving client in jail for 10 days], and *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1 [disruption of court proceedings and delay in cases caused significant harm to the administration of justice].)

High Level of Vulnerability of the Victim (Std. 1.5(n)): Respondent's client was incarcerated with limited ability to assist with his case. (See *In the Matter of Gonzalez, supra*, 5 Cal. State Bar Ct. Rptr. ___, 2018 WL 6314657, [incarcerated client was vulnerable per se because he was limited in his ability to assist attorney or stay apprised of attorney's efforts], citing *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.)

MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: Respondent was admitted to the practice of law in California on June 8, 1993, and has no prior record of discipline. Respondent is entitled to significant mitigation for having practiced law for 25 years without discipline. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245.)

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

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.) The standards help fulfill the primary purpose 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 discipline 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 lesser than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.2(a) states that actual suspension of three months is the presumed sanction for commingling or failure to promptly pay out entrusted funds. Standard 2.2(b) states that suspension or reproof is the presumed sanction for any other violation of Rule 4-100.

While Standard 2.2(a) provides that a 90-day actual suspension is the presumed sanction for commingling, the Review Department has recommended a shorter period of suspension based on significant mitigation. In *In the Matter of Bleecker*, the attorney received a 60-day actual suspension

after he commingled personal funds with client funds in his CTA, misappropriated \$270 advanced by a client for costs, and used his trust account to hold personal funds in order to avoid a tax levy. He had no prior discipline. In mitigation, the attorney was under financial pressure due to his wife's unemployment, he readily admitted his misuse of his CTA, he took steps to change his business practices, and he committed no misconduct in the six years following the misconduct at issue. Based on that mitigation, the Review Department recommended a lesser sanction than the 90-day actual suspension called for by Standard 2.2(b).¹ (*In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.)

In *In the Matter of Whitehead*, the attorney received a 45-day actual suspension after he commingled personal funds with client funds in one matter, failed to perform services competently in one matter, failed to communicate in one matter, and failed to cooperate with the State Bar investigation. The attorney had a prior private reproof that was remote in time. The court found substantial mitigation based on emotional difficulties related to the attorney's marriage. The Review Department acknowledged that Standard 2.2 presumed a 90-day actual suspension, but determined that a shorter suspension was appropriate because "the actual danger proved minimal and occurred under extenuating circumstances." (*In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354.)

Standard 2.7(b) states that actual suspension is the presumed sanction for performance, communication, or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests. Standard 2.7(c) states that suspension or reproof is the presumed sanction for performance, communication, or withdrawal violations, which are limited in scope or time. The degree of sanction depends on the extent of the misconduct and the degree of harm to the client or clients.

In *In Matter of Aulakh*, the attorney failed to perform legal services competently in a single client matter, improperly withdrew from employment while his client was incarcerated, failed to refund unearned fees, and failed to render an accounting to the client. The attorney had no prior record of discipline in 20 years of practice. In aggravation, the attorney significantly harmed his client by leaving him in jail for 10 days, and the attorney was uncooperative during the disciplinary proceeding. The Review Department recommended that the attorney be actually suspended for 45 days with three years of probation. (*In Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690.)

Here, as in *Aulakh*, respondent failed to perform legal services competently in a single client matter, and his failure to perform caused significant harm, in this case to both the client and the court. Respondent's client was also highly vulnerable due to his incarceration. Like *Aulakh*, Respondent also failed to render an accounting to a client. Respondent did not improperly withdraw from employment as the attorney did in *Aulakh*, but he failed to hold client funds in trust in another matter, and he commingled personal funds in his CTA. However, the failure to deposit the client funds into the CTA was inadvertent and isolated, and there is only one payment of a personal expense from the CTA. Respondent also failed in a third matter to provide an accounting and to obtain the required informed consent to allow the client's parents to pay for the representation. Thus, in total, respondent's conduct is more egregious than in *Aulakh* and *Bleeker*, and closer to *Whitehead*.

Based on *Whitehead* and *Bleeker*, the presumption of a 90-day actual suspension in Standard 2.2(a) is not appropriate here, especially in light of respondent's 25 years of practice with no discipline. An

¹ In 1990, subsection (b) of Standard 2.2 contained the provision of a 90-day actual suspension for commingling which is now in subsection (a).

actual suspension of 60 days in this case is consistent with *Aulakh*, *Bleecker*, and *Whitehead* and the Standards.

On balance, an actual suspension of 60 days, with one year of probation and requirements that respondent attend State Bar Ethics School and Client Trust Account School, will serve the purposes of attorney discipline.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of April 2, 2019, the discipline costs in this matter are \$9,704. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION (“MCLE”) CREDIT

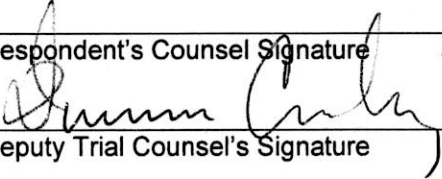
Respondent may not receive MCLE credit for completion of State Bar Ethics School ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: STEPHEN ROY GIRARDOT	Case Number(s): 17-O-03824-MC 18-O-11658 18-O-15996 (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>April 4, 2019</u> Date	 Respondent's Signature	<u>Stephen Roy Girardot</u> Print Name
<u>April 8, 2019</u> Date	 Deputy Trial Counsel's Signature	<u>Duncan Carling</u> Print Name

(Do not write above this line.)

In the Matter of:
STEPHEN ROY GIRARDOT

Case Number(s):
17-O-03824; 18-O-11658; SBC-19-O-30154

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 p. 15, DELETE the citations to In the Matter of Gonzalez on the last two paragraphs (Significant Harm and High Level of Vulnerability of the Victim) because the opinion, filed November 8, 2018, is not designated for publication. Thus, it is not citable and has no precedential value. (Rules Proc. of State Bar, rule 5.159(B); Cal. Rules of Court, rule 8.1115(a).)

2. On p. 16, first paragraph, and p. 17, last paragraph, "25 years" is deleted and replaced with "21 years," as Respondent had practiced law for 21 years without discipline at the time of his misconduct in 2014 in the Guzman matter.

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

April 30, 2019

Pat E. McElroy
PAT E. McELROY, JUDGE PRO TEM
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 April 30, 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:

STEPHEN R. GIRARDOT
LAW OFC STEPHEN R GIRARDOT
2815 S LOVERS LN APT C
VISALIA, CA 93292 - 3369

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

DUNCAN C. CARLING, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 30, 2019.



Bernadette Molina
Court Specialist
State Bar Court