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State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

Counsel for the State Bar

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Case Number(s):
17-O-06374

For Court use only

Bar # 190560

PUBLIC MATTER

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STATE BAR COURT
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LOS ANGELES

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Bar # 100849

Submitted to: **Assigned Judge**

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

In the Matter of:
DMITRI N. CHTYREV

ACTUAL SUSPENSION

Bar # 266591

PREVIOUS STIPULATION REJECTED

A Member of the State Bar of California
(Respondent)

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 1, 2009**.
- (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 17 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. One-half of the costs must be paid with Respondent's membership fees for each of the following years: 2020 and 2021.
- 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.
- (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 13.**
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

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

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

Additional mitigating circumstances:

No Prior Discipline, see page 13.
Prefiling Stipulation, see page 13.
Good Character, see page 13.

D. Recommended Discipline:

- (1) **Actual Suspension:**
- Respondent is suspended from the practice of law for **one (1) year**, the execution of that suspension is stayed, and Respondent is placed on probation for **two (2) years** with the following conditions.
- Respondent must be suspended from the practice of law for the first **30 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respondent is suspended from the practice of law for _____, 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

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

- (13) **Other:** Respondent must also comply with the following additional conditions of probation:
- (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. (*Atheam v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the

date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

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

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*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: DMITRI N. CHTYREV
CASE NUMBER: 17-O-06374

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statute.

Case No. 17-O-06374 (Complainant: Victor Pence)

FACTS:

1. On April 30, 2016, Pedro Gonzalez, a passenger in an automobile, was involved in an automobile accident. The owner of the other automobile involved in the accident was insured by Mercury Insurance Company. (“Mercury”).
2. On May 9, 2016, Mr. Gonzalez employed respondent to represent him on a contingency-fee basis with respect to his personal injury claims arising out of the April 30, 2016, accident (“accident”).
3. A clause in respondent’s fee agreement gave respondent a “special power of attorney” which permitted respondent to sign “all documents” related to Mr. Gonzalez’s personal injury claims arising out of the accident.
4. Mr. Gonzalez suffered neck and back sprains as a result of the accident. Between May 9, 2016, and October 4, 2016, Mr. Gonzalez incurred medical expenses totaling \$5,114.
5. On October 31, 2016, Mr. Gonzalez spoke with respondent’s paralegal and gave respondent the authority to settle his personal injury claim for any amount over his medical bills.
6. On December 1, 2016, Mr. Gonzalez died.
7. Pursuant to Code of Civil Procedure section 377.34, when Mr. Gonzalez died, a legal representative of his estate was entitled to recover the medical expenses incurred by Mr. Gonzalez as a result of the accident, *i.e.*, \$5,114. But, a legal representative of his estate was not entitled to an award for the pain and suffering Mr. Gonzalez experienced as a result of the accident.
8. On January 18, 2017, respondent agreed to settle Mr. Gonzalez’s personal injury claims in the amount of \$6,000. On January 23, 2017, a Mercury employee mailed a Release of All Claims (“Release”) to respondent’s law office. The Release contained a signature line for Mr. Gonzalez’s signature.

9. On January 30, 2017, one of respondent's employees, at respondent's instruction, signed Mr. Gonzalez's name on the release pursuant to the special power of attorney without informing Mercury that the signature was hers and not Mr. Gonzalez's. As a result, Mercury was led to believe that Mr. Gonzalez personally signed the release.

10. On April 17, 2017, Mr. Gonzalez's mother telephoned respondent's law firm and informed respondent's employee that Mr. Gonzalez had died. After the conversation, respondent's employee told respondent that Mr. Gonzalez had died. Thus, the first time that respondent was notified of Mr. Gonzalez's death was in April 2017.

11. At the time, respondent did not consider the application of Code of Civil Procedure section 377.34 to Mr. Gonzalez's personal injury claims. Specifically, he neglected to consider whether Mr. Gonzalez had passed away prior to the consummation of the settlement, which triggered his duty to notify Mercury of Mr. Gonzalez's death.

12. Upon learning about Mr. Gonzalez's death, respondent was grossly negligent in failing to timely: (i) determine the date of Mr. Gonzalez's death; and (ii) notify Mercury that Mr. Gonzalez had died before the settlement was consummated.

13. Had Mercury known that Mr. Gonzalez had died on December 1, 2016, pursuant to Code of Civil Procedure section 377.34, Mercury would not have settled Mr. Gonzalez's personal injury claims arising out of the accident for any amount above \$5,114, *i.e.*, the amount of Mr. Gonzalez's medical expenses.

14. On April 5, 2017, pursuant to the settlement of Mr. Gonzalez's personal injury claims, and without knowing that Mr. Gonzalez was deceased, Mercury issued a settlement draft made payable to respondent's law firm and Mr. Gonzalez in the amount of \$6,000. On April 13, 2017, the draft was deposited into respondent's client trust account.

15. Upon learning of Mr. Gonzalez's death, respondent requested Mr. Gonzalez's mother to evidence that she was Mr. Gonzalez's only heir. In early May 2017, Mr. Gonzalez's mother provided respondent with a notarized declaration to the effect that she was Mr. Gonzalez's only heir.

16. In late May and June 2017, respondent, with the consent of Mr. Gonzalez's mother, and after negotiating reductions of Mr. Gonzalez's medical expenses, disbursed Mr. Gonzalez's settlement funds by issuing checks from his client trust account made payable to: (i) himself in the amount of \$2,000; (ii) Mr. Gonzalez's medical providers in the total amount of \$1,796; and (iii) Mr. Gonzalez's mother in the amount of \$2,204.

17. On October 31, 2018, after these disciplinary proceedings commenced, respondent made restitution to Mercury in the amount of \$886, representing the amount of Mr. Gonzalez's settlement that exceeded his medical expenses (\$6,000-\$5,114).

CONCLUSIONS OF LAW:

18. By instructing his employee to sign Mr. Gonzalez's name to the Release pursuant to his special power of attorney without informing Mercury that the signature was the employee's and not Mr. Gonzalez's, which caused Mercury to believe that Mr. Gonzalez personally signed the Release, respondent committed an act of moral turpitude in violation of Business and Professions Code section 6106.

19. By failing to timely: (i) determine the date of Mr. Gonzalez's death; and (ii) notify Mercury that Mr. Gonzalez had died before the settlement of his personal injury claim had been consummated, respondent, as the result of gross negligence, committed an act of moral turpitude in violation of Business and Professions Code section 6106.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent's misconduct involved multiple acts of wrongdoing, including improperly instructing his employee to sign his client's name to the Release, and failing to timely: (i) determine his client's date of death; and (ii) notify Mercury of his client's death.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent was admitted to the State Bar on December 1, 2009. The misconduct in this matter first occurred on January 30, 2017, approximately seven years after respondent was admitted to the State Bar. Respondent's seven years of discipline-free practice is worth slight mitigation. (*In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 44 [attorney's seven years of practice in California prior to his misconduct should be accorded only slight weight in mitigation].)

Prefiling Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar Court 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].)

Good Character: Respondent provided the State Bar with character reference letters from six people, two of whom are members of the State Bar of California who have worked on personal injury cases with respondent. Of the remaining four character references, one is a long-time friend of respondent, and the remaining three are business associates. Respondent's references do not constitute a broad range of references from the legal and general communities. (*In the Matter of Mydrall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [three attorneys and three clients not found to constitute a broad range of references from legal and general communities].) But, the references credibly describe respondent's good character, integrity, professionalism, sincerity, thoughtfulness, and dedication. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591–592 [significant weight given to testimony of character witnesses who had long-standing familiarity with attorney and broad knowledge of his good character, work habits, and professional skill].)

AUTHORITIES SUPPORTING DISCIPLINE.

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

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

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

In this matter, respondent admits to committing two separate violations of Business and Professions Code section 6106 (“section 6106”). Standard 2.11 provides that disbarment or actual suspension is the presumed sanction for a violation of section 6106. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member’s practice of law.

Here, respondent’s two violations of section 6106 were central to the practice of law and caused the opposing party to be misled. First, respondent directed his employee to sign Mr. Gonzalez’s name on the Release which served to confirm the settlement of Mr. Gonzalez’s personal injury claims, which caused Mercury to believe that Mr. Gonzalez personally signed the Release. Second, respondent was grossly negligent in failing to timely: (i) determine the date of Mr. Gonzalez’s death after learning that he had died; and (ii) inform Mercury of Mr. Gonzalez’s death. As a result, the settlement of Mr. Gonzalez’s personal injury claim included \$886 in pain and suffering damages which were no longer recoverable as a result of Mr. Gonzalez’s death.

Respondent’s violations of section 6106 require a period of actual suspension as presumed by Standard 2.11. However, the presence of the mitigating, and other, factors make a period of actual suspension at the low end of the spectrum sufficient to serve the purposes of these proceedings. Respondent’s acknowledgment of wrongdoing, as demonstrated by his agreement to enter into this stipulation at an early stage of the proceedings, suggests that the misconduct herein is aberrational and that respondent is

willing and able to conform to his ethical responsibilities. Respondent is also entitled to mitigation for his seven years of discipline-free practice, and his character references credible descriptions of his good character. Although he is not entitled to receive mitigation credit for having made restitution after the commencement of these proceedings, the fact that respondent did make restitution to Mercury is a relevant factor in determining the appropriate level of discipline, because it shows respondent has taken subsequent steps to mitigate any harm caused by his misconduct.

In light of respondent's misconduct, the applicable standard, and the aggravating and mitigating circumstances surrounding the misconduct, a discipline consisting of a one-year suspension, stayed, and a two-year probation, with conditions including a 30-day actual suspension, is warranted.

The case law is also instructive as to the appropriate level of discipline. In *Levin v. State Bar* (1989) 47 Cal.3d 1140, the attorney committed serious acts of dishonesty in two separate client matters. In one matter, the attorney, in attempting to settle a lawsuit, made false statements of fact to opposing counsel and communicated with a party he knew to be represented by counsel. In a second matter, the attorney settled a lawsuit without his client's permission, simulated the client's name on the settlement release, and failed to deliver the settlement funds to the client. The Supreme Court ordered that the attorney, who had no prior record of discipline over 18 years, and who had no complaints against him during the three year pendency of the disciplinary proceedings, be suspended for three years, stayed, and placed on probation for three years, with conditions including a six-month actual suspension.

In *Hallinan v. State Bar* (1948) 33 Cal.2d 246, the Supreme Court determined that an attorney committed an act of dishonesty and deception by signing his client's signature on a release, under a formal power of attorney, without indicating that he was signing in a representative capacity, since the attorney knew the beneficiary was concerned to obtain the personal signature of the releaser. In addition, the attorney in *Hallinan*, obtained a false notarization of the signature by lying to the notary. The Supreme Court ordered that the attorney be actually suspended for 90-days.

Finally, in *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, the attorney signed a verification to a complaint on behalf of his clients as their attorney and under penalty of perjury, attesting that the clients were "absent" from LA County. However, the clients lived in LA County and were in fact in the county on the date that the attorney signed the verification. Thereafter, the attorney made dishonest statements in an attempt to conceal his misrepresentations in the verification in an opposition to the opposing party's motion to strike the complaint. The Review Department upheld the Hearing Department's finding that that the attorney was culpable of moral turpitude based on his gross neglect in executing and filing the false verification.

The Review Department found two significant aggravating factors. First, the attorney had a prior discipline consisting of a four month period of actual suspension. In addition, the Review Department found the attorney's subsequent acts of dishonesty and concealment to be very significant. The Review Department recommended a discipline consisting of a 150-day actual suspension. In so holding, the Review Department stated, "had this been [the attorney's] first offense, the limited nature of the misconduct ordinarily may have called for a short or even stayed period of actual suspension. However, [the attorney's] current misconduct is aggravated by his serious prior record and his subsequent dishonesty and concealment . . ." (*In the Matter of Downey, supra*, 5 Cal. State Bar Ct. Rptr. at p. 157.)

Thus, the case law calls for discipline ranging from a stayed suspension at the low end, to a six-month actual suspension at the high end. Here, respondent's dishonest conduct is less extensive than the

misconduct committed by the attorney in *Levin*, in that the attorney in *Levin* committed acts of dishonesty in two client matters. Thus, respondent's misconduct warrants a less severe discipline than the discipline that was imposed against the attorney in *Levin*. Respondent's misconduct is similar to that committed by the attorney in *Hallinan*, in that both matters involve simulating the signature of a client on a settlement release. But, the fact that respondent acknowledged his misconduct at an early stage of these proceedings is a significantly distinguishing mitigating factor. Accordingly, respondent's misconduct warrants a less severe discipline than that imposed against the attorney in *Hallinan*. Finally, even though this is respondent's first disciplinary proceeding, respondent's multiple acts of dishonesty still warrant a short period of actual suspension under *Downey*. Thus, the case law also supports a discipline consisting of a 30-day actual suspension.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of November 19, 2018, the discipline costs in this matter are \$3,300. One-half of the costs must be paid with respondent's membership fees for the years 2020 and 2021. 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: DMITRI N. CHTYREV	Case Number(s): 17-O-06374
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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>12/04/2018</u> Date	<u><i>D. Chtyrev</i></u> Respondent's Signature	<u>Dmitri N. Chtyrev</u> Print Name
<u>12/17/2018</u> Date	<u><i>[Signature]</i></u> Respondent's Counsel Signature	<u>James I. Ham</u> Print Name
<u>12/21/18</u> Date	<u><i>[Signature]</i></u> Deputy Trial Counsel's Signature	<u>Eli D. Morgenstern</u> Print Name

(Do not write above this line.)

In the Matter of: DMITRI N. CHTYREV	Case Number(s): 17-O-06374
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ACTUAL SUSPENSION ORDER

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

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

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See 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).)**

December 28, 2018 [Signature]
Date 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 Los Angeles, on January 3, 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:

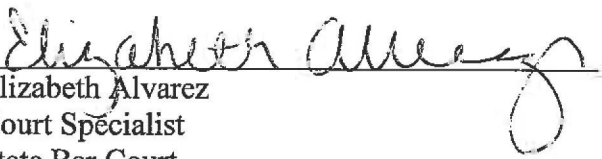
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JAMES IRWIN HAM
LAW OFFICE OF JAMES I. HAM A PROF.
CORP.
655 N CENTRAL AVE FL 17
GLENDALE, CA 91203 - 1439

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

Eli D. Morgenstern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 3, 2019.


Elizabeth Alvarez
Court Specialist
State Bar Court