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

<p>Counsel for the State Bar</p> <p>Duncan Carling Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2204</p> <p>Bar # 262387</p>	<p>Case Number(s): 17-O-6639-MC</p> <p>kwiktag® 241 071 997</p> 	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED </p> <p>MAR 20 2019</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Theodore Carl Lindquist III 20 Valleyview Terrace Novato, CA 94949-8436</p> <p>Bar # 178523</p>	<p>Submitted to: Settlement Judge</p>	
<p>In the Matter of: THEODORE CARL LINDQUIST</p> <p>Bar # 178523</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 7, 1995**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **20** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (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. One-fourth of the costs must be paid with Respondent's membership fees for each of the following years: 2020, 2021, 2022, 2023.

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.
- (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 11.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [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 12.

Emotional Difficulties, see page 12.

Pretrial Stipulation, see page 12.

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.

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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. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further,

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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: **Mental Health Conditions, see page 16, and Financial Conditions, see pages 17-19.**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: THEODORE CARL LINDQUIST

CASE NUMBER: 17-O-06639-MC

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.

FACTS:

1. In December 2014, respondent overdrew his personal checking account at Citibank. After respondent failed to repay the debt to Citibank within a certain period of time, the bank declared the debt as a loss, closed the account, and reported respondent's failure to pay to ChexSystems, a credit reporting agency.
2. After respondent's personal checking account at Citibank was closed, he made attempts to open another checking account at other banks, but his applications were declined due to the negative credit report to ChexSystems. After December 2015, respondent began using his Citibank client trust account ("CTA") for personal transactions because it was his only bank account at that time. Respondent was not holding any client funds in his CTA and did not hold any client funds in his CTA from August 2016 through November 2018.
3. Between November 2016 and November 2018, 22 payments from respondent's CTA were declined by Citibank due to insufficient funds ("NSF payments"), with ten additional NSF attempts on the same payments. The NSF payments were electronic fund transfers that were either processed on an automatic payment schedule or authorized by respondent based on his mistaken assumption that the funds were available in the account. In three instances, respondent attempted unsuccessfully to stop a transfer from being processed. Respondent was not regularly monitoring his CTA carefully to ensure that there were sufficient funds to cover the upcoming electronic fund transfers during this time period. All of the 22 NSF payments were subsequently resolved with the payee.
4. Between August 2017 and March 2018, respondent made over 100 payments from his CTA for personal expenses, including payments to PG&E, Comcast, State Farm, Blue Shield, Amazon Marketplace, Safeway, Target, Costco, and Netflix, totaling over \$20,000. Respondent also made 54 cash withdrawals during that time period, in a total amount of \$18,045.
5. On October 1, 2018, respondent resolved his debt from December 2014 with Citibank, and in November 2018, he opened a new personal checking account and a new business operating account at Citibank. Respondent stopped using his CTA for personal transactions in November 2018.

CONCLUSIONS OF LAW:

6. By repeatedly issuing electronic payments drawn upon respondent's CTA at Citibank, account no. 2036xxxxx, from November 2016 to November 2018, when respondent was grossly negligent in not knowing that there was insufficient funds in the CTA to pay them, respondent thereby committed an act involving moral turpitude in willful violation of Business and Professions Code, section 6106.
7. By issuing over 100 payments for personal expenses from respondent's CTA at Citibank, account no. 2036xxxxx, between August 2017 and March 2018, respondent commingled personal funds in his CTA in willful violation of Rules of Professional Conduct, rule 4-100(A).

MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: Respondent was admitted to the practice of law in California on December 7, 1995 and has no prior record of discipline. Respondent is entitled to significant mitigation for having practiced law for 20 years without discipline. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245.)

Extreme Emotional Difficulties (Std. 1.6(d)): Beginning in 2016, respondent experienced difficult personal, family, and financial issues which caused severe depression and anxiety. Respondent has presented evidence from his treating physician that respondent's depression and anxiety disorder was responsible for respondent's misconduct. This depression and anxiety caused him to be lax in monitoring his CTA to ensure that there were sufficient funds to cover upcoming electronic fund transfers. It also caused him to be lax in dealing with non-trust funds being placed in his CTA. Respondent's treating physician opined that respondent has made considerable progress on his psychological problems and does not currently pose a risk of future misconduct. He, however, recommends continued therapy to ensure that the condition does not return. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [attorney's financial and emotional problems, which had substantially improved through counseling, considered in mitigation].)

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, supra*, 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 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 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 2.11 states that disbarment or actual suspension is the presumed sanction for an act of moral turpitude. The degree of sanction depends on the magnitude of the misconduct, the extent of harm to the victim, and the extent to which the misconduct related to the member’s practice of law.

Standard 2.2(a) states that a 90-day actual suspension 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.)

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).

In *In Matter of Doran*, the attorney received a six-month actual suspension after he abandoned a client in the midst of a hearing, failed to perform competently in another matter, and used his trust account as a personal checking account for three years, during which time he overdrew the account 28 times. The Review Department found that the overdrafts on the CTA were due to gross negligence, and noted that each of the payees eventually received the funds due to them, but found that the conduct constituted moral turpitude in violation of section 6106. The court also noted that the attorney did not keep client funds in his trust account, but found that his use of the trust account nonetheless violated rule 4-100(A), stating: "Such conduct constituted commingling within the meaning of rule 4-100 even where there were no client funds in the trust account." (*In Matter of Doran* (1998) 3 Cal. State Bar Ct. Rptr. 871.)

In aggravation, the *Doran* court found a second uncharged instance of client abandonment. In mitigation, the attorney was cooperative during the proceedings. The court noted that the attorney had no prior record of discipline, but the misconduct began two years after the attorney was admitted to practice, and therefore he lacked the "many years of practice" required for mitigation. The Review Department recommended that the attorney be actually suspended for six months. The court noted, however, that had the misconduct been limited to the trust account violations, the Hearing Department's recommendation of a 90-day actual suspension would have been appropriate. The Review Department recommended a six-month actual suspension based on the additional misconduct of client abandonment, stating that it was "an extremely serious violation of perhaps a lawyer's most profound obligation, fidelity to one's client." (*In Matter of Doran, supra*, 3 Cal. State Bar Ct. Rptr. 871.)

In *In the Matter of Heiser*, the attorney issued seven checks over a ten-month period that were returned by the bank either for insufficient funds or because they were written on a closed account. The Review Department found that "his conduct constituted a pattern of dishonesty and moral turpitude" in violation of section 6106. The attorney also commingled personal funds in his CTA, failed to maintain a current membership address with the State Bar, and failed to cooperate in the State Bar investigation. The only factor in mitigation was his lack of a prior record of discipline. The Review Department recommended an actual suspension of six months. (*In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47.)

Here, respondent's misconduct is most similar to the misconduct in *Doran*. Like the attorney in *Doran*, respondent was not keeping client funds in his CTA, the payees eventually received their funds, and the overdrafts were due to gross negligence. Respondent has factors in mitigation, however, that were not present in *Doran*. He had practiced for over 20 years without misconduct before the misconduct in this case began, and he presented evidence of extreme emotional difficulties. A 60-day actual suspension in this case is consistent with *Doran*, *Bleecker*, *Whitehead*, *Heiser*, and the Standards.

Although each of these cases predate *In re Silvertown* (2005) 36 Cal. 4th 81 and its emphasis on the importance of the Standards, they are entitled to some consideration here. Further, respondent's years of no prior discipline and emotional difficulties support a deviation from the Standards and show that the public will be protected by a 60-day actual suspension.

On balance, a 60-day actual suspension with two years of probation, and requirements that respondent attend Ethics School, Trust Account School, and comply with the attached Mental Health Conditions and Financial Conditions, 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 March 8, 2019, the discipline costs in this matter are \$7,998. 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:
THEODORE CARL LINDQUIST

Case Number(s):
17-O-6639-MC

Medical Conditions

- a. **Mental Health Conditions:** Respondent must obtain psychiatric or psychological counseling or treatment to address mental health issue(s), at Respondent's own expense, from a duly licensed psychiatrist, psychologist, clinical social worker, or marriage and family therapist (mental health professional), and must provide such licensed individual with a copy of this stipulation. However, if such mental health professional determines at any time that no additional counseling or treatment is necessary, Respondent may furnish a written statement from the mental health professional to that effect to the Office of Probation. Respondent must commence counseling or treatment no later than 30 days after the effective date of the Supreme Court order imposing discipline in this proceeding and must comply with any counseling or treatment plan developed by the mental health professional. Respondent must certify under penalty of perjury in each quarterly report and in the final report that Respondent has obtained and complied with such psychiatric or psychological counseling or treatment plan during the period covered by such report. Within 60 days of written notice from the Office of Probation, Respondent must provide satisfactory evidence of such compliance to the Office of Probation. The Office of Probation may require that such satisfactory evidence be a letter from the mental health professional on such individual's letterhead, or on a form approved by the Office of Probation, that Respondent has obtained such psychiatric or psychological counseling or treatment and that Respondent has complied with a counseling or treatment plan during the period specified in the written notice.
- b. **Medical Waivers:** Within 45 days after the effective date of the SELECT ONE order imposing discipline in this matter, Respondent must provide the Office of Probation with an authorization to disclose and obtain medical information (medical waiver) and access to all of Respondent's medical records related to Respondent's SELECT ONE for the period . Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, the Office of Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing, or adjudicating this probation/reproval condition.
- c. **Other:**

(Do not write above this line.)

(4) Installment Restitution Payments (Multiple Payees)

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

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

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

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

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

Respondent must comply with the following reporting requirements:

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

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

Respondent must comply with the following reporting requirements:

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

(Do not write above this line.)

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

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

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


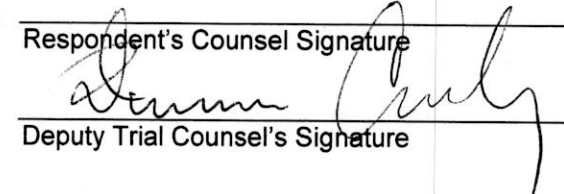
(7) Other:

(Do not write above this line.)

In the Matter of: THEODORE CARL LINDQUIST	Case Number(s): 17-O-6639-MC
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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.

March 11, 2019 Date	 Respondent's Signature	Theodore Carl Lindquist Print Name
Date	Respondent's Counsel Signature	Print Name
March 11, 2019 Date	 Deputy Trial Counsel's Signature	Duncan Carling Print Name

(Do not write above this line.)

In the Matter of: THEODORE CARL LINDQUIST III	Case Number(s): 17-O-06639-MC
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ACTUAL SUSPENSION ORDER

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

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

1. "III" is inserted after "LINDQUIST" in the caption of the Stipulation on pages 1, 16, 17 and 20 and at the top of page 11.
2. On page 12 of the Stipulation, at numbered paragraph 7, line 3, "former" is inserted before "rule 4-100".
3. On page 14 of the Stipulation, paragraph 6, line 1, "two years" is deleted, and in its place is inserted "one year".
4. On page 20 of the Stipulation, "III" is inserted after Respondent's typed name.

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

March 18, 2019
Date

Rebecca Meyer Rosenberg
REBECCA MEYER ROSENBERG, 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 March 20, 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:

THEODORE C. LINDQUIST III
LINDQUISTLAW
20 VALLEYVIEW TER
NOVATO, CA 94949 - 8436

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

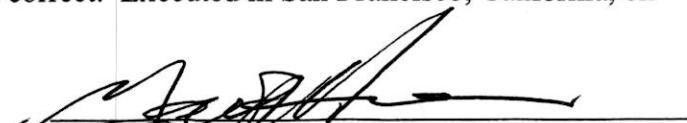
by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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 March 20, 2019.


George Hue
Court Specialist
State Bar Court