FILED

Jul 21, 2021

Disciplinary Board

Docket # 004

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

PAUL JOHN NOVACK,

Lawyer (Bar No. 13880).

Proceeding No. 20#00052

ODC File No(s). 18-00353

STIPULATION TO SUSPENSION

13

14

15

16

17

18

19

20

21

22

23

1

2

3

4

5

6

7

8

9

10

11

12

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through managing disciplinary counsel Kathy Jo Blake, Respondent's Counsel Leland G. Ripley and Respondent lawyer Paul John Novack.

Respondent understands that they are entitled under the ELC to a hearing, to present exhibits and witnesses on their behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that they are entitled under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the Supreme Court. Respondent further understands that a hearing and appeal could result in an

24

1	outcome more favorable or less favorable to them. Respondent chooses to resolve this proceeding		
2	now by entering into the following stipulation to facts, misconduct and sanction to avoid the risk,		
3	time, expense attendant to further proceedings.		
4	I. ADMISSION TO PRACTICE		
5	Respondent was admitted to practice law in the State of Washington on November 9,		
6	1983.		
7	II. STIPULATED FACTS		
8	Respondent has an active personal injury practice.		
٥	2. Respondent has an active personal injury practice.		
9	3. Between at least July 1, 2017 and April 30, 2019, Respondent maintained only one		
10	IOLTA account, with an account number ending in #2448, at Columbia Bank for the deposit of		
11	client funds.		
12	Respondent was the only authorized signer on the account.		
13	Failure to supervise non lawyer assistant and failure to keep proper trust account records.		
14	 Other than signing checks, Respondent took very little responsibility for managing 		
15	the trust account prior to February, 2018 and knew little about the day-to-day operations of the		
16	financial aspects of his law firm.		
17	Respondent delegated all of the law firm's financial administrative duties, including		
18			
	managing the operating account and trust account and making all QuickBooks entries, to paralegal		
19	Teresa Nara.		
20	Nara processed client settlements and prepared the checks disbursing client funds		
21	from the trust account, which Respondent signed.		
22	 Respondent did not supervise Nara's management of the trust account. 		
23	 Respondent's firm also employed a number of different receptionists throughout the 		
24			

1	relevant time period, who would prepare the deposits to the trust account.
2	10. Respondent was also assisted by Vickie Strong, an outside accountant, who
3	reconciled the firm's bank accounts (including the trust account), processed payroll checks, and
4	filed payroll taxes.
5	11. Strong sent Respondent the monthly QuickBooks reconciliation reports in the mail
6	each month, but Respondent did not review them thoroughly.
7	12. On February 20, 2018, February 23, 2018, and February 26, 2018, Columbia Bank
8	issued overdraft notices for Respondent's trust account.
9	13. Eight checks totaling \$19,024.52 had been presented for payment against
10	insufficient funds in the account.
11	14. The bank paid all of the checks.
12	15. An ODC auditor performed an examination of financial records of Respondent's
13	trust account for the period of August, 2013 and July 1, 2017 through April 30, 2019 and also
14	reconstructed Respondent's trust-account records for the period of June 1, 2017 through October
15	31, 2017.
16	16. Between August 2013 and May 2018, Respondent did not maintain individual client
17	ledgers.
18	17. Between August 2013 and May 2018, the records Respondent did keep did not
19	indicate the ownership of all of the funds in the trust account.
20	18. Because Respondent did not keep client ledgers, Respondent was unable to reconcile
21	the check register balance to the ledger balances.
22	19. On October 16, 2017, Nara prepared two checks from the trust account, in the
23	amounts of \$48,000 and \$10,344, to fund Nara's and Respondent's retirement accounts
24	

1	(respectively).
2	20. Respondent signed both checks.
3	21. On October 16, 2017, Respondent's operating account balance was \$32,164.58,
4	which is \$26,179.42 less than Respondent needed to fully fund the retirement accounts.
5	22. Respondent's trust account check register, maintained by Nara, lists two deposits
6	dated October 19, 2017 in the amounts of \$48,000 and \$10,344, but no such deposits were made
7	on October 19, 2017.
8	23. The funds were not restored in the trust account until February 2018 (the \$10,344)
9	and March 2018 (the \$48,000), four and five months after the deposits were recorded in the check
10	register.
11	24. Respondent's October 2017 reconciliation report prepared by Strong lists the two
12	deposits as outstanding and at the time of the February 2018 overdrafts, both deposits were still
13	listed as outstanding on the monthly QuickBooks reconciliation reports.
14	25. Respondent did not realize that Nara used trust account funds to fund the retirement
15	account until March 2018 when Respondent received copies of the overdraft notices from ODC.
16	26. In March, 2018, Respondent instructed Nara to replace the funds but the funds were
17	not fully replaced until February, 2019.
18	Failure to deposit and hold funds in trust and improperly disbursing one clients funds to another
19	client or third party.
20	27. On August 20, 2013, one of Respondent's receptionists deposited a \$50,000 settlement
21	for client S.Z. into Respondent's operating account that should have been deposited into the trust
22	account.
23	28. On August 15, 2013, before depositing S.Z.'s settlement check into the operating
24	account, Respondent issued a check to himself representing the fee of \$16,666.66 from the trust

1	account.
2	29. Between October 7, 2013 and October 20, 2013, Respondent issued six additional
3	checks relating to S.Z.'s matter until all disbursements from the trust account on S.Z.'s matter
4	totaled \$50,000.
5	30. Because S.Z. had no funds on deposit in the trust account, Respondent used \$50,000
6	belonging to other clients to fund these disbursals.
7	31. On May 30, 2017, a \$13,500 settlement check for client L.G. that should have been
8	deposited into the trust account was deposited into the operating account.
9	32. Respondent disbursed L.G.'s settlement funds from the trust account with funds
10	belonging to other clients.
11	33. Respondent cured the \$13,500 on March 1, 2018.
12	34. On May 15, 2017, Nara's paycheck for \$4,799.95 was drawn on the trust account
13	instead of the operating account.
14	35. Consistent with their practice, Nara prepared the check, and Respondent signed it.
15	36. Respondent cured the \$4,799.95 shortage on March 8, 2018.
16	37. ODC reconstructed Respondent's trust account records for the period of June 1, 2017
17	through October 31, 2017.
18	38. The reconstruction records revealed that, as of October 31, 2017, there was a
19	shortage of \$160,710.98 in the trust account.
20	39. Between February 26, 2018 and February 7, 2019, Respondent deposited \$126,643.95
21	of his own funds to cure part of the shortage.
22	40. The reconstructed client ledgers revealed eight client ledgers with negative balances
23	totaling \$41,098.01 as indicated in the list below:
24	

11

15

16

17 18

19

20

21 22

23 24

Negative Client Ledger Balances				
From Auditor Reconstructed Records				
July 1, 2017 - December 31, 201	17			
I D	ć	(260.00)		
J.B.	\$	(360.00)		
A.B.	\$	(193.30)		
G.F.	\$	(1.00)		
C.K.	\$	(372.83)		
K.M.	\$	(750.00)		
I.P.	\$(\$(29,863.00)		
G.T.	\$	(1,707.88)		
B.T.	\$	(7,850.00)		
Total Negative Client Balances as 12/31/17	\$ (41,098.01)		

Failure to promptly pay client and/or third parties.

- 41. Respondent's October 2017 reconciliation report listed 52 outstanding checks totaling \$39,036.81 that were more than one year old, and dated as far back as 2005. See Attachment A.
- Respondent's June 2021 reconciliation report does not list any of the 52 outstanding checks.

III. STIPULATION TO MISCONDUCT

- 43. By failing to supervise Nara's management of his trust account and/or by failing to make reasonable efforts to ensure that Respondent's firm had in effect measures giving reasonable assurance that Nara's conduct was compatible with Respondent's professional obligations, Respondent violated RPC 5.3.
- 44. By failing to keep individual client ledgers and a current and accurate check register, Respondent violated RPC 1.15(B)(2), 1.15A(h)(2) and 1.15B(1).
- 45. By failing to reconcile the check register balance to the combined total of all client ledgers, Respondent violated RPC 1.15A(h)(6) and RPC 1.15B(a)(8).

1	46. By disbursing funds on behalf of clients who had no funds in trust and/or by using the
2	funds of other clients to cover the disbursements, Respondent violated RPC 1.15A(h)(8).
3	47. By failing to deposit client settlement funds into the trust account, and by removing
4	funds that should have been held in trust, Respondent violated RPC 1.15A(c)(1).
5	48. By failing to promptly pay funds to his clients and/or third parties, Respondent
6	violated RPC 1.15A(f).
7	IV. PRIOR DISCIPLINE
8	49. Respondent received a Reprimand in 1994 for engaging in a conflict of interest in
9	violation of RPC 1.9(a).
10	V. APPLICATION OF ABA STANDARDS
11	50. American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed. & Feb
12	1992 Supp.) apply to this case:
13	4.1 Failure to Preserve the Client's Property
۱4	4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
15	4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or
16	potential injury to a client. 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
	with client property and causes injury or potential injury to a client.
17	4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a
18	client.
19	 7.0 Violations of Duties Owed as a Professional 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
20	conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or
21	potentially serious injury to a client, the public, or the legal system.
22	7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes
23	injury or potential injury to a client, the public, or the legal system.
,,	

1	 substantial experience in the practice of law [admitted in 1983]. 			
2	60. The following mitigating factors apply under ABA Standard 9.32:			
3	 (b) absence of dishonest or selfish motive; (d) timely good faith effort to make restitution or rectify consequences of 			
4	misconduct; (1) remorse; and			
5	(m) remoteness of prior offenses.			
6	61. It is an additional mitigating factor that Respondent has agreed to resolve this matter			
7	at an early stage of the proceedings.			
8	62. On balance the aggravating and mitigating factors do not require a departure from the			
9	presumptive sanction of suspension.			
10	VI. STIPULATED DISCIPLINE			
11	63. The parties stipulate that Respondent shall receive a 9 month suspension for his			
12	conduct.			
13	64. As a condition of reinstatement from suspension, Respondent must complete the			
14	following steps to disburse any funds that are owed to clients or third parties and to receive			
15	additional education on how to handle client funds in compliance with the Washington Supreme			
16	Court's RPC 1.15A and RPC 1.15B:			
17	 a) Respondent must provide ODC with proof of having deposited Respondent's own funds to the trust account[s] to cure the outstanding shortages reflected in paragraph 			
18	40 and detailed in the Auditor Sambrano's May 18, 2020 Audit Report.			
19	b) Funds in trust not identified to a client. As of April 30, 2019, Respondent's trust account held \$97,946.30 not identified to any specific client. Respondent must			
20	provide ODC with complete documentary evidence and explanation demonstrating that he has taken all reasonable steps to identify the ownership of the funds and 1)			
21	deliver the funds to the appropriate parties and 2) provide the client with a complete accounting of funds. If after taking reasonable steps, Respondent cannot identify the			
22	ownership of the funds or locate the owner of the funds, Respondent should treat the funds as unclaimed property under the Uniform Unclaimed Property Act, RCW			
23	63.29. Respondent will provide ODC with documentation establishing that the funds have been delivered, are no longer owed, or have been remitted to the Department of			
24	Revenue pursuant to RCW 63.29.			

- c) For each of the outstanding checks listed in Attachment A (Auditor Sambrano's May 18, 2020 Audit Report Attachment A pages 3-4 October 2017 Reconciliation Report), Respondent shall within 60 days of final approval of this stipulation take steps to contact the respective payees and determine the status of the uncashed checks. If after taking reasonable steps, Respondent is unable to locate the client(s) or third persons(s), Respondent should treat the funds as unclaimed property under the Uniform Unclaimed Property act, RCW 63.29. Within six months of final approval of this stipulation, Respondent shall provide ODC with proof that the funds have been delivered, are no longer owed, or have been remitted to the Department of Revenue consistent with RCW 63.29.
- d) For the time frame of January 1, 2018 up through the date of submission to ODC for consideration of reinstatement, Respondent must provide to ODC, for each trust account open during any portion of that time frame, copies of the following:
 - any and all bank statements,
 - copies of any and all deposited items,
 - copies of any and all records of disbursements,
 - a complete and accurate check register identifying every transaction,
 - complete and accurate client ledgers identifying every transaction attributable to a client,
 - monthly reconciliations between the check register and the bank
 - monthly reconciliations between the check register and the client ledgers,
 - if the Respondent maintains trust-account records in QuickBooks, provide an electronic copy of the file with the trust-account records.
- Respondent must carefully review the WSBA publication <u>Managing Client Trust</u> Accounts: Rules, Regulations, and Common Sense, and provide disciplinary counsel with a signed certification that they have done so.
- Respondent must complete the WSBA continuing legal education course entitled, "Managing Client Trust Accounts" (October 2014), or an equivalent 1.5 credits on managing trust accounts in Washington State, and provide disciplinary counsel with documentation showing that they have done so.
- To be eligible for reinstatement under ELC 13.3(b)(1)(B), Respondent must provide the required documentation to disciplinary counsel at least 30 days prior to seeking certification of compliance with reinstatement provisions.
- 65. Respondent will be subject to probation for a period of two years commencing upon

Respondent's reinstatement to the practice of law, with periodic reviews under ELC 13.8 of their

trust account practices, and must comply with the specific probation terms set forth below:

- h) Respondent shall carefully review and fully comply with RPC 1.15A and RPC 1.15B, and shall carefully review the current version of the publication, <u>Managing Client Trust Accounts</u>: Rules, Regulations, and Common Sense.
- For all client matters, Respondent shall have a written fee agreement signed by the client, which agreements are to be maintained for least seven years (see RPC 1.15B(a)(3)).
- j) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and Review Report," Respondent shall review the trust-account records detailed on the form report, review the completed report, and sign and date the completed report.
- k) On a quarterly basis, Respondent shall provide ODC's audit staff with all trustaccount records for the time period to be reviewed by ODC's audit staff and disciplinary counsel for compliance with the RPC:
 - Months 1 3. By no later than the 30th day of the fourth month after the commencement of probation, Respondent shall provide the trust account records from the date of commencement of probation to the end of the third full month.
 - ii) Months 4 6. By no later than the 30th day of the seventh month after the commencement of probation, Respondent shall provide the trust account records from the end of the previously provided quarter through the end of month six.
 - iii) Months 7 − 9. By no later than the 30th day of the tenth month after the commencement of probation, Respondent shall provide the trust account records from the end of the previously provided quarter through the end of month nine.
 - iv) Months 10 12. By no later than the 30th day of the thirteenth month after the commencement of probation, Respondent shall provide the trust account records from the end of the previously provided quarter through the end of month twelve.
 - v) Months 13 15. By no later than the 30th day of the sixteenth month after the commencement of probation, Respondent shall provide the trust account records from the end of the previously provided quarter through the end of month fifteen.
 - vi) Months 16 18. By no later than the 30th day of the nineteenth month after the commencement of probation, Respondent shall provide the trust account records from the end of the previously provided quarter through the end of month eighteen.
 - vii) Months 19 21. By no later than the 30th day of the twenty-second month after the commencement of probation, Respondent shall provide the trust

22

23

24

account records from the end of the previously provided quarter through the end of month twenty-one.

The trust account records Respondent provides to ODC for each quarterly review of his trust account will include: (a) copies of each completed "Monthly Reconciliation and Review Report" referenced in sub-paragraph(c) above, (b) a complete checkbook register for his trust account covering the period being reviewed, (c) complete individual client ledger records for any client with funds in Respondent's trust account during all or part of the period being reviewed, as well as for Respondent's own funds in the account (if any), and (d) copies of all trust-account bank statements, deposit slips, and cancelled checks covering the period being reviewed. ODC's Audit Manager or designee will review Respondent's trust account records for each period.

- On the same quarterly time schedule set forth in the preceding paragraph, Respondent will provide ODC's Audit Manager or designee with copies of any and all fee agreements entered into within the time period at issue.
- m) ODC's Audit Manager or designee may request additional financial or client records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B. Within twenty days of a request from ODC's Audit Manager or designee for additional records needed to verify Respondent's compliance with RPC 1.15A and/or RPC 1.15B, Respondent will provide ODC's Audit Manager or designee the additional records requested.
- n) Respondent will reimburse the Association for time spent by ODC's Audit Manager or designee in reviewing and reporting on Respondent's records to determine their compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour. Respondent will make payment within thirty days of each written invoice setting forth the auditor's time and payment due.

VII. RESTITUTION

No order of restitution is necessary in this matter.

VIII. COSTS AND EXPENSES

67. In light of Respondent's willingness to resolve this matter by stipulation at an early stage of the proceedings, Respondent shall pay \$2,004.62 (\$1,004.62 in actual costs and a reduced expenses of \$1,000) in ELC 13.9(c) expenses in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these costs are not paid within 30 days of approval of this stipulation.

Reinstatement from suspension is conditioned on payment of costs.

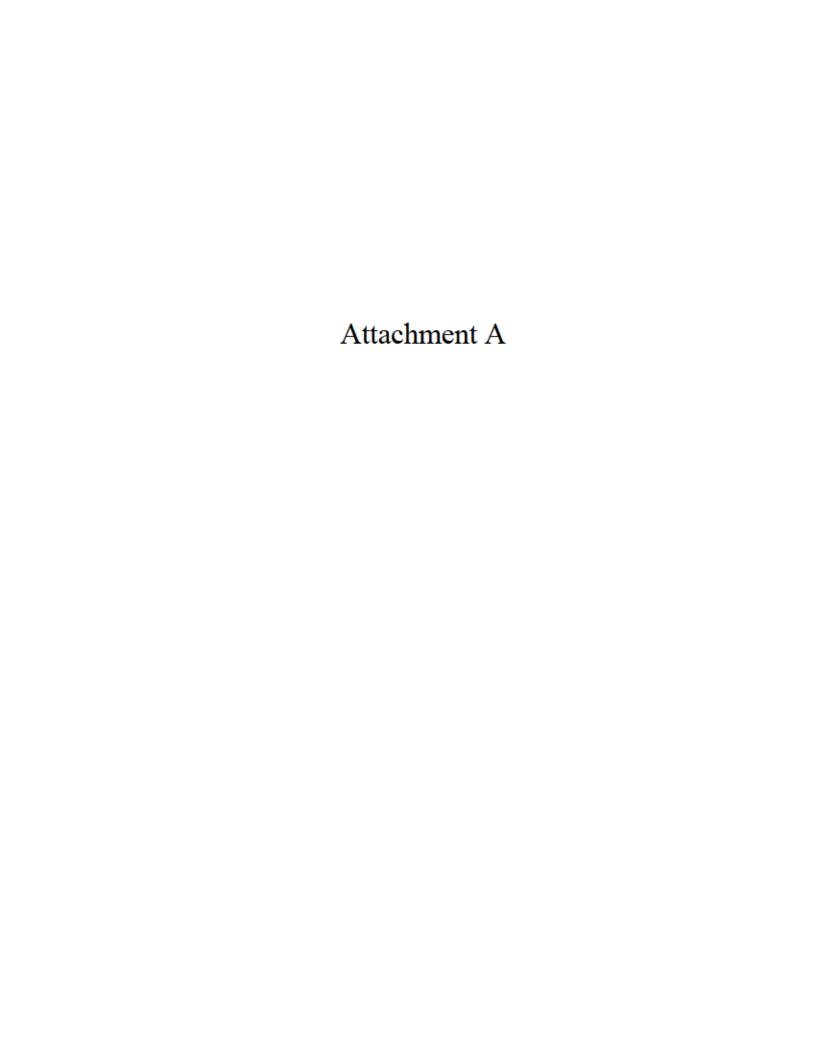
1 IX. VOLUNTARY AGREEMENT 2 69. Respondent states that prior to entering into this Stipulation they have consulted 3 independent legal counsel regarding this Stipulation, that Respondent is entering into this Stipulation voluntarily, and that no promises or threats have been made by ODC, the Association, 4 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except 5 6 as provided herein. 7 70. Once fully executed, this stipulation is a contract governed by the legal principles 8 applicable to contracts, and may not be unilaterally revoked or modified by either party. 9 X. LIMITATIONS 10 71. This Stipulation is a compromise agreement intended to resolve this matter in 11 accordance with the purposes of lawyer discipline while avoiding further proceedings and the 12 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer 13 and ODC acknowledge that the result after further proceedings in this matter might differ from 14 the result agreed to herein. 15 72. This Stipulation is not binding upon ODC or the respondent as a statement of all 16 existing facts relating to the professional conduct of the respondent lawyer, and any additional 17 existing facts may be proven in any subsequent disciplinary proceedings. 18 73. This Stipulation results from the consideration of various factors by both parties, 19 including the benefits to both by promptly resolving this matter without the time and expense of 20 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As 21 such, approval of this Stipulation will not constitute precedent in determining the appropriate 22 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in

subsequent proceedings against Respondent to the same extent as any other approved Stipulation.

23

24

24



Uncleared Transactions

8 H -276.72 -276.72 -28.00 -304.72 H -273.68 -578.40 -604.80
H -273.68 -578.40 -604.80
-26.40 -604.80
-26.40 -604.80
C -175.00 -779.80
S -552.27 -1,332.07
-795.43 -2,127.50
-1,698.44 -3,825.94
F -2,187.08 -6,013.02
-1,409.18 -7,422.20
& I C -550.00 -7,972.20
P -195.00 -8,167.20
F -72.98 -8,240.18
-220.00 -8,460.18
-270.84 -8,731.02
-2,055.37 -10,786.39
L -1,200.00 -11,986.39
F -2,088.00 -14,074.39
Y M -125.00 -14,199.39
Y -20.00 -14,219.39
R -15.00 -14,234.39
S -830.34 -19,054.33
-336.60 -19,801.54
P. H 440.00 -20,241.54
D -100.00 -20,341.54
-251.36 -20,592.90
-320.30 -20,913.20
-6,343.41 -27,256.61
-18.83 -27,275.44
-95.83 -27,371.27

Law Offices of Novack and Novack Reconciliation Detail

1075 · Columbia Bank - Iolta Acct, Period Ending 10/31/17

Туре	Date	Num	Name	Clr	Amount	Balance
Check	01/22/14	25327	SERNEH		-135.00	-27,506.27
Check	01/24/14	25348	R M I		-123.60	-27,629.87
Check	01/28/14	25356	A		-157.24	-27,787.11
Check	03/18/14	25450	C		-850.26	-28,637.37
Check	03/18/14	25449	0000		-584.00	-29,221.37
Check	03/18/14	25451	i		-323.00	-29,544.37
Check	03/18/14	25452	i		-86.54	-29,630.91
Check	09/22/14	25674	R C S		-156.93	-29,787.84
Check	01/29/15	25870	C		-1,003.08	-30,790.92
Check	03/26/15	25943	A & A		-237.05	-31,027.97
Check	03/26/15	25937	OSS		-63.71	-31,091.68
Check	03/27/15	25964			-264.00	-31,355.68
Check	03/27/15	25960	R C		-264.00	-31,619.68
Check	05/07/15	25995	R S		-227.74	-31,847.42
Check	06/21/15	26182	R C S		-2,132.88	-33,980.30
Check	06/21/15	26072	A		-929.25	-34,909.55
Check	07/28/15	26118	P H 8		-762.66	-35,672.21
Check	07/28/15	26116	TELEC		-455.00	-36,127.21
Check	09/16/15	26206	HIE		-709.39	-36,836.60
Check	08/03/16		S C M.		-2,200.21	-39,036.81
Check	03/08/17	27097	P & D		-270.00	-39,306.81
Check	03/16/17	27115	C		-1,061.83	-40,368.64
Check	03/21/17	27132	C B		-516.00	-40.884.64
Check	03/29/17	27136	W & P		-637.90	-41,522.54
Check	04/06/17	27179	G		-6,274.25	-47,796.79
Check	09/28/17	27429	R		-478.15	-48,274.94
Check	09/30/17	27439	HR		-2,427.77	-50,702.71
Check	10/03/17	27451	F N I		-6,169.47	-56,872.18
Check	10/09/17	27459	M B A		-162.55	-57,034.73
Check	10/20/17	27476	M		-3,780.45	-60,815.18
Check	10/20/17	27480	N B C		-874.00	-61,689.18
Check	10/20/17	27484	E C C		-385.00	-62,074.18
Check	10/20/17	27478	CLLLL		-20.00	-62,094.18
Check	10/23/17	27486	C A J.		-1,189.88	-63,284.06
Check	10/24/17	27489	T B R.		-4,561.95	-67,846.01
Check	10/27/17	27504	O S		-50,000.00	-117,846.01
Check	10/27/17	27505	T P G L		-3,691.06	-121,537.07
Check	10/30/17	27500	Paris		-13,520.85	-135,057.92
Check	10/30/17	27497	PJN		-9,954.33	-145,012.25
Check	10/30/17	27499	F		-4,500.00	-149,512.25
Check	10/30/17	27496	A R.		-4,455.89	-153,968.14
Check	10/30/17	27492	A DE.		-4,257.90	-158,226.04
Check	10/30/17	27498	PJN		-1,887.82	-160,113.8
Check	10/30/17	27506			-1,779.51	-161,893.3
Check	10/30/17	27495	F N I		-1,388.47	-163,281.84
Total Ch	necks and Payment	ts			-163,281.84	-163,281.84