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State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

Counsel for the State Bar **Kristin L. Ritsema, Bar No. 149966** **Senior Trial Counsel** **Scott D. Karpf, Bar No. 274682** **Deputy Trial Counsel** **845 S. Figueroa Street** **Los Angeles, CA 90017-2515** **(213) 765-1235** Bar #	Case Number(s): **09-C-10290-DFM**	For Court use only **PUBLIC MATTER** FILED SEP 21 2018 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent **Robert K. Weinberg** **Law Office of Robert K. Weinberg** **19200 Von Karman Ave., Suite 380** **Irvine, CA 92612** **(949) 474-9700** Bar # **102135**	Submitted to: **Assigned Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING **ACTUAL SUSPENSION** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter of: **ROBERT LEE WALDMAN** Bar # **120397** 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 10, 1985**.

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.

(3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **25** pages, not including the order.

(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

(6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. It is recommended that (check one option only):

☒ Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

☐ Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. SELECT ONE of the costs must be paid with Respondent's membership fees for each of the following years:

If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be due and payable immediately.

☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs."

☐ Costs are entirely waived.

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

(1) ☐ **Prior record of discipline:**

(a) ☐ State Bar Court case # of prior case:

(b) ☐ Date prior discipline effective:

(c) ☐ Rules of Professional Conduct/ State Bar Act violations:

(d) ☐ Degree of prior discipline:

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.

(2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.

(3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.

(4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.

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

(6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.

(7) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(8) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See page 21.**

(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.

(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. **See pages 21-22.**

(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. **See page 22.**

(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. **See page 22.**

(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 21.

Pretrial Stipulation - see page 22.

D. Recommended Discipline:

(1) ☐ **Actual Suspension:**

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

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

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

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

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

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

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

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

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

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

Respondent is suspended from the practice of law for , 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):

Payee	*Principal Amount*	*Interest Accrues From*

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

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

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

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

  a. Respondent makes restitution to in the amount of $ plus 10 percent interest per year from (or reimburses the Client Security Fund to the extent of any payment from the

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

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

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

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

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

a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

Payee	*Principal Amount*	*Interest Accrues From*

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

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

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

- Respondent is suspended from the practice of law for the first of probation (with credit given for the period of interim suspension which commenced on).

E. Additional Conditions of Probation:

(1) ☒ **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's

compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

(2) ☒ **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.

(3) ☒ **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

(4) ☒ **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

(5) ☒ **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

(6) ☒ **Quarterly and Final Reports:**

a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.

b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. **Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

(7) ☒ **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.

(8) ☐ **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because .

(9) ☐ **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.

(10) ☐ **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.

(11) ☒ **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

(12) ☐ **Minimum Continuing Legal Education (MCLE):** Within after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete hour(s) of California Minimum Continuing Legal Education-approved participatory activity in SELECT ONE and must

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

(13) ☐ **Other:** Respondent must also comply with the following additional conditions of probation:

(14) ☒ **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

(15) ☐ **The following conditions are attached hereto and incorporated:**

☐ Financial Conditions ☐ Medical Conditions

☐ Substance Abuse Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

F. Other Requirements Negotiated by the Parties (Not Probation Conditions):

(1) ☒ **Multistate Professional Responsibility Examination Within One Year or During Period of Actual Suspension:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Respondent's actual suspension, whichever is longer, and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.

(2) ☐ **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because .

(3) ☒ **California Rules of Court, Rule 9.20:** Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the

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

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

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

Credit for Interim Suspension: Respondent will receive credit for the entire period of his interim suspension toward the stipulated period of actual suspension. Respondent's interim suspension commenced on June 20, 2016.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ROBERT LEE WALDMAN

CASE NUMBER: 09-C-10290-DFM

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which he was convicted involved moral turpitude.

Case No. 09-C-10290-DFM (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

2. On October 19, 2009, a grand jury filed an 85-count indictment against respondent and five co-defendants in the Superior Court of the State of California, County of Orange, case number 09ZF0072. Respondent was charged with seven counts in the indictment:

- 3 counts of Fraud in the Offer or Sale of a Security in violation of California Corporations Code section 25401 (Counts 55 and 57 as to victim DR and Count 59 as to victim BD);
- 3 counts of Grand Theft in violation of Penal Code section 487(a) (Counts 56 and 58 as to victim DR and Count 60 as to victim BD); and
- 1 count of engaging in a Fraudulent Securities Scheme in violation of California Corporations Code section 25541(a) (Count 85 as to all investors in the Carolina Development Company and the Carolina Company at Pinehurst, including but not limited to DR and BD).

As enhancements, the indictment further alleged that respondent:

- Committed two or more related felonies, a material element of which was fraud, involving a pattern of related felony conduct and the taking of more than $500,000, within the meaning of Penal Code section 186.11(a)(2) (Sixth Special Allegation);
- Took property in an amount exceeding $200,000 in the commission of a felony, with the intent to cause the taking, within the meaning of Penal Code section 12022.6(a)(2) and (b) (Twelfth Special Allegation); and
- With intent to do so, took funds exceeding $100,000, within the meaning of Penal Code section 1203.045(a) (Thirteenth Special Allegation).

3. On June 11, 2010, respondent was arraigned, pled not guilty to all counts, and denied all of the special allegations.

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4. On December 18, 2014, the original indictment was amended to add Count 86: Unlawfully Selling or Offering to Sell Any Security in an Issuer Transaction Without Qualification in violation of California Corporations Code section 25110, a felony. The same day, respondent pled guilty to Count 86, and the court accepted respondent's plea.

5. On February 27, 2015, the court suspended imposition of sentence and placed respondent on formal probation for three years with various conditions. Among other conditions, the court ordered respondent to:

- Serve 180 days in Orange County Jail. The court stayed the jail time until April 24, 2015 and recommended supervised electronic confinement, which is what respondent served;
- Pay various fines, fees and assessments; and
- Cooperate with probation or mandatory supervision officer in any plan for psychological, psychiatric, alcohol and/or drug treatment.

The court reserved jurisdiction over the issue of restitution to be paid to victims. Upon motion by the People, the court dismissed all remaining counts as to respondent and all enhancements. Thereafter, respondent's conviction became final.

6. On November 6, 2015, a restitution hearing was held, and the court ordered that respondent pay restitution in the amount of $360,437.15 to DR and $105,500 to BD.

7. On January 14, 2018, respondent's probation was extended to February 26, 2020 at the request of the probation department as respondent is still paying restitution as directed by the probation department.

8. On May 2, 2016, the Office of Chief Trial Counsel ("State Bar") transmitted records of respondent's conviction to the Review Department of the State Bar Court and on the same day filed a motion for summary disbarment.

9. On May 26, 2016, the Review Department issued an order denying the State Bar's motion for summary disbarment, finding that the elements of the offense for which respondent was convicted do not involve the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involve moral turpitude. However, because respondent was convicted of a felony, the Review Department issued an order suspending respondent from the practice of law effective June 20, 2016 pending final disposition of the disciplinary proceeding pursuant to Business and Professions Code section 6102, ordering respondent to comply with rule 9.20 of the California Rules of Court, and referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

10. On June 20, 2016, respondent timely filed with the State Bar Court his affidavit of compliance with rule 9.20 of the California Rules of Court.

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FACTS:

Background re Lambert Vander Tuig

11. Lambert Vander Tuig ("Vander Tuig") held Series 7, 63, and 65 licenses issued by the National Association of Securities Dealers ("NASD") and worked as a registered representative with various broker dealers from 1988 through 1996.

12. On August 2, 1999, the United States Securities and Exchange Commission ("SEC") brought an action against Vander Tuig in the United States District Court for the Central District of California, case number CV 99-7900 RAP (RCx). In the complaint, the SEC alleged that between December 1995 and September 1996, Vander Tuig engaged in an unregistered offering of 1.2 million shares of Fastlane Footwear, Inc. ("Fastlane") stock and engaged in a scheme of the type commonly referred to as a "pump and dump" scheme. In part, the complaint alleged:

- Vander Tuig had complete control over most of the Fastlane shares. By using five nominee accounts, Vander Tuig dominated and controlled the market for Fastlane stock, accounting for over 96% of the shares traded during the relevant period;
- Vander Tuig manipulated the market for Fastlane stock and artificially drove up the price of the stock 56% from its initial sale price by controlling the supply of the stock and creating artificial demand for it;
- After inflating the price of Fastlane stock, Vander Tuig dumped the stock, selling the bulk of the shares in the nominee accounts to retail investors, after which the price of the security plummeted.

13. Vander Tuig's default was entered, and on March 27, 2000, the United States District Court issued a final judgment of permanent injunction and other relief against Vander Tuig, enjoining him from violating the Securities Act of 1933 and the Securities Exchange Act of 1934, including selling unregistered securities and engaging in fraudulent or deceptive acts in connection with the sale of securities, and ordering him to pay disgorgement in the amount of $61,305, plus prejudgment interest in the amount of $14,572.31, and civil penalties in the amount of $61,305. He never paid any of the disgorgement and civil penalties ordered.

14. On June 13, 2000, the SEC initiated an administrative proceeding against Vander Tuig based on the same facts as alleged in the United States District Court case described above.

15. On August 17, 2000, an order entering default, making findings and imposing sanctions was entered in the SEC proceeding against Vander Tuig, finding that the facts alleged by the SEC were true and barring Vander Tuig from association with any broker or dealer.

16. By early 2004, Vander Tuig began using as an alias the last name "Vander Tag" as well as at least one other alias.

17. Vander Tuig is a convicted co-defendant in the underlying criminal case and was the mastermind behind the securities fraud scheme in which respondent became ensnared as described below.

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The Carolina Development Company Scheme

18. The Carolina Company at Pinehurst, Inc. ("CCP") and The Carolina Development Company, Inc. ("CDC") were both Nevada corporations created by Vander Tuig, incorporated on August 3, 2001, and located in Irvine, California. Neither company was ever qualified to do business in California. CDC made only one filing with the SEC: a "Regulation D" private placement exemption dated October 28, 2005, stating that CDC wanted to raise $10.15 million through the sale of 4.35 million shares at $1.50 to $3.00 per share pursuant to a Private Placement Memorandum ("PPM") dated June 30, 2004.

19. CCP and CDC were interchangeable with no meaningful differences. Investors were told to make their checks payable to both at different times, but they received stock in CCP; both entities claimed ownership of the same properties; and both claimed the same stock symbol, "CACP." Unless otherwise indicated, they are referred to collectively in this stipulation as CDC.

20. Starting as early as August 2001, Vander Tuig began selling stock in CDC. He was not licensed by the NASD or the state of California to sell securities. Eventually, he and others ran a "boiler room" in Irvine, California selling CDC stock through a private placement offering. The operation grew to employ approximately 60 independent contractors as salespeople. The salespeople, who were unlicensed, primarily made cold calls to potential investors from lead lists purchased by CDC. From 2001 through February 16, 2006, at least $52 million worth of unqualified shares of common stock and promissory notes in CDC were sold to investors across the country.

21. CDC purportedly was a successful real estate development company that specialized in building luxury resorts and upscale residential communities on land it owned surrounding world championship golf courses designed by Arnold Palmer, Jack Nicklaus and Greg Norman. However, in reality it was a fraudulent investment scheme of the type commonly referred to as a "Ponzi" scheme.

22. According to CDC's offering material, Lambert "Vander Tag" was the president, CEO and a director, and Jonathan Jensen, who had a degree in Economics and had worked as a political lobbyist, purportedly was the vice president, handling CDC's day-to-day marketing. In reality, Jonathan Jensen never existed at CDC. Jonathan Carman ("Carman") was the vice president in charge of the sales force at CDC. He had a background as a telemarketer, truck driver and owner of a carpet and window service company. Some of the other people listed as officers in the offering material also never had any actual involvement with CDC.

23. Information regarding CDC's assets, operations, and stock was provided to the salespeople by Vander Tuig and/or Carman. Vander Tuig and Carman prepared and provided to the salespeople various scripts which the salespeople were to follow in cold-calling potential investors. They also conducted regular meetings with the salespeople to convey information to pass on to investors. When investors had specific questions, Vander Tuig and Carman told salespeople how to respond or told them to refer the investor to the salesperson's manager. Vander Tuig and Carman also prepared and over time revised and amended the information and documents given to investors.

24. After a salesperson made initial contact with a potential investor, CDC sent an investor package to the potential investor. The investor package contained a PPM as well as a variety of sales materials about CDC and the investment. Salespeople also referred potential investors to CDC's website, which contained similar information about CDC.

25. In order to induce victims to invest, CDC's personnel, written materials and website made false representations including: CDC was in partnership with Arnold Palmer; CDC would pay dividends from property sales revenue; overstating the amount of real estate owned outright by the company; understating the amount of CDC stock that was outstanding; CDC was going to go public any day; sales commissions would not exceed 15%; and investments over $100,000 would be secured with a first trust deed on a parcel of land with a value equal to or greater than the investment.

26. In addition, CDC's personnel, written materials and website failed to inform investors that: the president of the company was not using his real name because he had been disciplined by the SEC for engaging in unregistered sales of stock and fraud; the vice president listed in the offering material was not the actual vice president; CDC's stock was listed on the "Pink Sheets" and was available for purchase at a lower price through any broker; and CDC's stock was oversold by $40,000,000, which diluted its value.

27. In November of 2005, instead of going public as promised for over four years, CDC began a new fraudulent private offering to raise $100 million.

Respondent's Conduct

28. After graduating from law school and being admitted to practice in California, respondent worked for a number of law firms and was in-house counsel for two companies with interests in real estate. None of respondent's work involved securities. He was laid off in 2004.

29. Respondent started working for CDC as an independent contractor salesman in September 2004. Although he had no prior experience of any kind in sales, he needed work and took the job without knowing much about the company or what to expect. All he knew at the time was that CDC was involved in the development of golf course residential communities and that he would be a sales representative for CDC, selling fractionalized interests in the company to potential investors. He was told that Vander Tuig (who went by the name Vander Tag at the time) had a broker-dealer license and therefore the salespeople did not need licenses to sell stock. He did not do any independent research to determine if this was true.

30. As a salesman, respondent received leads, scripts or pitch sheets, and information about CDC from his supervisor, SY, who was a sales manager with CDC. Respondent made cold calls using the sales script that he had been given and worked on a straight commission basis, earning 10% to 15% on his sales of CDC stock, depending on whether the commission was split with another salesperson.

31. When respondent started working for CDC, the sales script that respondent was given stated that CDC stock was "qualified" to trade on the market on a stated date. Respondent did not understand at the time what it meant for a stock to be "qualified" for trading. Although he had no experience in securities and did not understand some of the terminology in the script, respondent had no reason to doubt that the information was inaccurate. With respect to the SEC registration of CDC stock, SY, Vander Tuig and Carman represented that the stock was registered. Respondent never did any independent research to determine whether CDC's stock was registered or qualified for an exemption. Nor did he ever do any other research into CDC or any of its officers or directors.

32. Respondent did not like sales and at the end of 2004 asked Vander Tuig if he could transition from salesman to an in-house counsel position with CDC. Vander Tuig agreed to work him into that position over a period of time. In March 2005, respondent became in-house counsel for CDC

and received an office but was told by Vander Tuig to continue to sell stock at least one-third of the time and whenever he had no other work to do.

33. Respondent's duties as in-house counsel were undefined and he was not assigned much substantive legal work to do for CDC. Vander Tuig claimed that CDC had outside counsel who handled securities issues, and outside counsel also handled CDC's litigation. Respondent had nothing to do with corporate filings, SEC filings, accounting, or financial statements and was never privy to any financial information other than what was in the offering material and other materials used by all of the salespeople. Carman became his manager, and respondent continued to solicit investors and attend sales meetings like the rest of the sales force. Although he was in-house counsel, he was not included in managers' meetings except on a couple of occasions.

34. Respondent was occasionally introduced to potential investors as CDC's attorney.

35. During the time respondent worked for CDC, six people invested in CDC through respondent including: BD, who invested $150,000; DR, who invested $500,000; and four other investors who invested a total of $162,500 and were not named as victims in the underlying criminal case.

36. In approximately December 2004, respondent cold-called BD and, using the script he had been given, told BD that: CDC was developing upscale golf-course properties in the Carolinas and Texas; an investment of $150,000 or more would be collateralized or secured by a deed to a piece of property; there would be a 4% yearly dividend paid quarterly; CDC was planning to go public; Vander Tuig had done similar operations in the past; and if he wanted to do so, BD could take a trip to North Carolina, at CDC's expense, to personally view CDC property that would be used as collateral for his investment. BD subsequently received an investor package with the CDC brochure, PPM and other materials and invested $150,000 in March 2005. It took a long time for BD to receive the promised deed, and he had several conversations with respondent asking about it. BD eventually received the deed to the parcel securing his investment in August 2005. At some point after he invested, BD told respondent that he wanted to take the trip to North Carolina. CDC flew BD and his wife to North Carolina, where they met Vander Tuig and viewed CDC's development property. BD did not learn until after CDC was shut down that the property was worth much less than the $150,000 that he had invested.

37. In late 2004, DR was cold-called by another representative of CDC (not respondent), who told DR that: an investment of $100,000 in CDC stock would be collateralized by a trust deed in his name to land in North Carolina worth at least twice his investment; as CDC accumulated land, the value of CDC's shares would increase; and CDC would go public and the stock would be worth many times what he paid for it. DR subsequently received an investor package and invested an initial $100,000 in January 2005.

38. In May 2005, Carman contacted DR and told him that CDC was doing "1031 exchanges" in which DR could exchange land he owned for land CDC owned, and he would not have to pay taxes on it. DR owned land behind Dodger Stadium that he wanted to exchange but he did not understand the process, so Carman brought respondent in to explain the process to DR. Respondent explained that the value of DR's property would be exchanged for stock in CDC, and his investment would again be collateralized with property in North Carolina. He explained that the tax-free exchange would be accomplished through a third party (First American Exchange Company), and he would walk DR through it. Both Carman and respondent told DR that CDC was going public soon and the stock would be worth much more than he paid for it. Based on these representations and those in CDC's written material, DR decided to exchange his two lots for CDC stock and deeds to lots in North Carolina. DR

felt comfortable making the investment knowing that respondent was an attorney. With respondent's assistance, in May 2005, DR transferred $175,000 that he received through escrow from his two lots plus an additional $25,000 for a total investment in CDC of $200,000. DR eventually received a deed to a parcel of property in North Carolina in November 2005. He did not learn until after CDC was shut down that the property was worth much less than the $200,000 that he had invested. A 2007 property tax notification indicated that the property had a value of $62,000.

39. In January 2006, respondent called DR and solicited him to invest more money in CDC. He told DR that he should invest because CDC would be going public soon and the shares would be worth much more than he paid for them. Respondent also assured DR that his investment would be collateralized with property. DR decided to invest an additional $300,000 in CDC.

40. Respondent states that during the time he worked for CDC, he believed what Vander Tuig and Carman told him about CDC and believed in CDC and that it was not until after CDC was shut down that he learned that it was a scheme. He acknowledges that he was grossly negligent in failing to critically evaluate and investigate Vander Tuig and CDC, in believing whatever Vander Tuig and Carman told him without conducting any independent inquiry to ascertain whether what they told him was the truth, and in failing to recognize and act upon numerous red flags that he should have recognized and acted upon. Further, he now recognizes in hind-sight that having him as in-house counsel helped give the appearance to investors and other salespeople that CDC was a legitimate company. The red flags indicating that CDC was not what it purported to be and that respondent should have recognized and acted upon included the following:

a. When he was hired, respondent read the offering material including the PPM but did not read it closely. During the time he worked for CDC he was aware that there were several versions of the PPM. He also was aware that at least one property that had been listed as a CDC asset, Little River, was no longer listed. Vander Tuig and Carman simply explained that CDC was no longer pursuing that property. Respondent did not take any action to investigate. In reality, the property had never been an asset of CDC.

b. Shortly after he was hired, respondent solicited SRC, one of the companies where he had previously been employed as an in-house counsel, to invest in CDC because he knew SRC was interested in acquiring real estate. Respondent and SY made a personal presentation to SRC about doing a collateralized investment up to $7.5 million. SRC was interested and its chief financial officer submitted a list of information it would need from CDC in order to do due diligence, including financial information. Respondent made several attempts to get Vander Tuig to get the requested information to SRC as he stood to earn a good commission if the deal went through. However, Vander Tuig never provided the requested information to SRC and eventually told respondent that CDC's financials would not withstand scrutiny by financial advisors. Vander Tuig told respondent that auditors and accountants would get CDC's financials in order prior to the company going public.

c. Respondent became aware of an issue surrounding the spelling of Vander Tuig's last name, since he was using the name Vander Tag. Initially, Vander Tuig told respondent that he changed the spelling of his name to make it easier to pronounce and even asked respondent to look into legally changing the spelling. Respondent provided Vander Tuig with forms to use to legally change his name but did not know if Vander Tuig ever followed through with doing that.

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d. Later, Vander Tuig and Carman told CDC staff that: Vander Tuig had been the subject of a SEC civil regulatory action regarding another company; it was a technical violation; and the matter had been settled and a fine paid. Respondent never checked with the SEC or did any independent research into the issue. A simple Google search at the time would have revealed the true nature of Vander Tuig's prior SEC history.

e. Respondent never saw or spoke with Jonathan Jensen, the purported vice president who was listed in the PPM. Respondent did not know why Carman was not listed in the PPM.

f. CACP was CDC's stock symbol. Respondent and the rest of the sales force knew that CACP was listed on the "Pink Sheets." However, Vander Tuig told everyone that: the trading activity regarding CACP was the "vestige" of a prior stock that he was involved with; the bulk of the CACP stock was tendered as part of a merger; the shares being traded were the ones that were never tendered; and that before CDC went public, all of the CACP shares would be addressed.

g. In March 2005, respondent learned that a lawsuit had been filed by Pinehurst, Inc. against CDC alleging that CDC did not have the right to use the Pinehurst name. Respondent told Vander Tuig that it was necessary to hire outside counsel in North Carolina to handle the case, which was done. Respondent later learned that there was a formal settlement with Pinehurst, and thereafter, Vander Tuig told everyone that CDC had to stop using the name "Pinehurst" in its title. The company changed its name from The Carolina Company at Pinehurst, Inc. to The Carolina Development Company, Inc. at this time.

h. Respondent learned that Arnold Palmer's lawyers sent two demand letters in July and September 2005 alleging that CDC was using Palmer's name and image without authority and demanding that CDC cease and desist. Vander Tuig told respondent that he believed he had the right to use or reference Palmer's name because of some pre-existing circumstances regarding an Arnold Palmer property in North Carolina. Respondent was aware of a letter sent by CDC advising that CDC was within its rights to use Palmer's name. Thereafter, CDC continued to use Palmer's name and image in its materials.

i. Respondent and the other salespeople told prospective investors that CDC would be going public. However, the target date for CDC to go public was deferred several times. Vander Tuig explained that CDC was pursuing additional property acquisitions and it would be better if those acquisitions could be included in the value of the company before going public. Respondent did not know and did not do any independent research about the requirements for a company to go public. In reality, CDC had not taken any significant steps to register an offering of stock and never filed any application with the SEC or the California Department of Corporations to go public. In late 2005, Vander Tuig and Carman informed CDC staff that an accounting firm had been retained to begin the process of going public.

j. Respondent learned that some of the properties that CDC was listing as company assets were held in individual names, including the names of Vander Tuig and his wife and Carman and his wife. Vander Tuig explained that properties were purchased and held in individual names rather in CDC's name because if it became known that CDC was purchasing large tracts of land, it would drive up the price of the land.

k. One of respondent's jobs as in-house counsel was to coordinate with an outside attorney for CDC in North Carolina to collateralize investments with deeds of trust. Vander Tuig

determined which property would be used to collateralize a particular investor's investment and provided the information to respondent, who relayed the information to the North Carolina attorney, who then prepared the deed and any other necessary paperwork. Respondent obtained the investor's signature on the deed and then sent it back to the North Carolina attorney to record. Respondent became aware that there was a backlog or delay in getting trust deed to the investors. Vander Tuig explained that certain large properties had to be subdivided and that the legal entitlement process was not complete with others, so it was taking longer than expected to get the lots to collateralize investors.

l. In November 2005, the SEC began investigating CDC. Vander Tuig and Carman told staff that it was just an inquiry about a minor technical matter and not to worry.

41. At no time did respondent tell BD, DR, or any of the other potential investors that he solicited any of the foregoing.

42. Respondent remained employed with CDC until it was shut down by the SEC in February 2006 as set forth below. Respondent received total compensation of approximately $270,000 during his employment with CDC. This consisted of both sales commissions and his monthly salary after he was named in-house counsel.

The SEC Action

43. In September 2005, the California Department of Justice ("DOJ") and the SEC learned about the CDC "boiler room" from an informant and launched an investigation.

44. On February 16, 2006, in conjunction with the execution of a search warrant by DOJ, the SEC obtained a temporary restraining order in the United States District Court for the Central District of California, case number SA CV 06-00172 AHS (MLGx), against CDC, CCP, Vander Tuig and Carman for fraud in the sale of unregistered securities. The SEC also obtained an order from the United States District Court freezing Vander Tuig's and Carman's assets and appointing a receiver for CDC and its affiliates. CDC was effectively shut down as of February 16, 2005.

45. The receiver for CDC determined that only a small amount of investor funds was productively employed to create future returns. Instead, investor funds were used for high, undisclosed sales commissions, "Ponzi" dividends to investors, and the personal use of principals Vander Tuig, Carman and others.

46. On February 22, 2007 and August 7, 2007, the United States District Court issued orders granting summary judgment as to Vander Tuig and Carman, respectively. On April 14, 2008, the United States District Court issued a final judgement and permanent injunction and other relief against Vander Tuig and Carman, enjoining them from further violations of the Securities Act of 1933 and the Securities and Exchange Act of 1934, including: selling unregistered securities; employing any device, scheme or artifice to defraud; and obtaining money by means of any untrue statement or omission of material fact. The court also barred Vander Tuig and Carman from participating in any offering of penny stock and prohibited them from acting as an officer or director of any stock issuer. The court ordered Vander Tuig to pay disgorgement in the amount of $29,252,000, representing profits gained as a result of the misconduct, plus prejudgment interest of $2,102,655.87, and civil penalties of $100,000. The court ordered Carman to pay disgorgement in the amount of $2,191,188.15, plus prejudgment interest of $252,391.44, and civil penalties of $100,000.

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Four of Five Co-Defendants Convicted of Fraud and/or Grand Theft

47. Co-defendant Vander Tuig, the president and CEO of CDC, was convicted in the underlying criminal case on November 10, 2014 after he pled guilty to all 85 counts of the indictment--including 42 counts of fraud in the offer or sale of a security, 42 counts of grand theft, and 1 count of engaging in a fraudulent securities scheme, all felonies--and admitted all enhancements alleged in the special allegations. Vander Tuig was sentenced to serve twenty years in State Prison and was ordered to pay restitution to specified victims.

48. Co-defendant Carman, the vice president in charge of the sales force of CDC, was convicted on December 17, 2014 after he too pled guilty to all 85 felony counts of the indictment and admitted all enhancements alleged in the special allegations. Carman was sentenced to serve twelve years in State Prison and was ordered to pay restitution to specified victims.

49. Co-defendant SY, the sales manager of CDC, was convicted on December 17, 2014, after he pled guilty to all 21 counts of the indictment that were alleged against him—including 10 counts of fraud in the offer or sale of a security, 10 counts of grand theft, and 1 count of engaging in a fraudulent securities scheme, all felonies--and admitted all enhancements alleged in the special allegations. SY was sentenced to serve six years in State Prison and was ordered to pay restitution to specified victims.

50. Co-defendant MS, an unlicensed salesman and supervisor at CDC, was convicted on November 20, 2014 after he pled guilty to 2 counts of fraud in the offer or sale of a security, both felonies. The remaining counts and special allegations as to MS were dismissed. The court suspended imposition of sentence and placed MS on formal probation for five years with conditions including serving 360 days in the Orange County Jail, with court authorization for community work program and supervised electronic confinement, and payment of restitution to specified victims.

51. Co-defendant SS, an unlicensed salesman at CDC, was convicted on January 5, 2015 after he pled nolo contendere to a felony violation of unlawfully selling or offering to sell a security in an issuer transaction without qualification, which was added to the indictment by interlineation. The remaining counts and special allegations as to SS were dismissed. The court later reduced the felony to a misdemeanor pursuant to Penal Code section 17(b), suspended imposition of sentence, and placed SS on informal probation for three years with conditions, including payment of restitution to specified victims.

CONCLUSION OF LAW:

52. The facts and circumstances surrounding the above-described violation involved moral turpitude. Respondent was grossly negligent in failing to critically evaluate and investigate Vander Tuig, Carman and CDC, in believing whatever Vander Tuig and Carman told him without conducting any independent inquiry to ascertain whether what they told him was the truth, and in failing to recognize and act upon numerous red flags that he should have recognized and acted upon. Respondent also was grossly negligent in making misrepresentations to potential investors and concealing material information that was necessary for the potential investors to make informed decisions and necessary in order for the statements made by respondent to not be misleading. Respondent's grossly negligent omissions, concealment and misrepresentations of facts constitute moral turpitude. The California Supreme Court has made clear that acts of moral turpitude include both affirmative misrepresentations and concealment and has held that omission or concealment of a material fact is as misleading as a false statement and "no distinction can therefore be drawn among concealment, half-truth, and false statement

of fact." (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315, citing *Green v. State Bar* (1931) 213 Cal. 403, 405.) Creating a false impression by concealment constitutes an act of moral turpitude. (*Grove v. State Bar, supra,* at p. 315; *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 910; *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91.) And, a finding of gross negligence in making an affirmative misrepresentation or creating a false impression through concealment is sufficient to find moral turpitude. (See *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330; *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798, 808; *In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9, 15.)

AGGRAVATING CIRCUMSTANCES.

Significant Harm to Client, Public or Administration of Justice (Std. 1.5(j)): The victims of the CDC securities fraud scheme, including DR and BD, suffered significant financial harm. As set forth above, as a condition of his criminal probation, respondent was ordered to pay restitution to DR in the amount of $360,437.15 and to BD in the amount of $105,500. Respondent has made and continues to make monthly restitution payments as directed by the probation department. However, due to his limited financial resources, he is only paying $133 per month, which is the amount that the probation department determined that he should pay per month. Co-defendants Vander Tuig and Carman also were ordered to pay restitution to DR and BD, and co-defendant SY was ordered to pay restitution to BD.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent was admitted to practice law in California in December 1985 and has no prior record of discipline. Respondent had practiced law for approximately 19 years prior to the commencement of the misconduct herein. Mitigation credit may be afforded for lack of prior discipline even where misconduct is serious as in this case. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.) Respondent is entitled to significant mitigation for his 19 years of discipline-free practice. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [ten years of discipline-free practice given "significant weight" in mitigation]; *Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [more than 20 years of discipline-free practice "highly significant"].)

Extreme Emotional, Physical, or Mental Difficulties and Disabilities (Std. 1.6(d)): Respondent has presented evidence that he suffered extreme emotional difficulties or physical or mental disabilities at the time of the misconduct, which expert testimony would establish were directly responsible for the misconduct. Specifically, according to the psychologist who treated respondent from July 2003 through July 2013, plus two visits in 2014, at the time of the misconduct, respondent was diagnosed with and suffered from major depression, generalized anxiety disorder, and mixed personality disorder. In addition, he experienced suicidal ideation, suffered a great deal of stress due to a high-conflict divorce (discussed under "Family Problems" below), and was despondent and chronically distracted. During the period of the misconduct, respondent attempted suicide. According to respondent's treating psychologist, respondent's condition was acute and affected his ability to reason, make wise decisions, and operate competently, which led to respondent's misconduct.

According to respondent's psychologist, in the years subsequent to 2006, respondent's condition stabilized through compliance with treatment. Respondent's primary physician reports that respondent is currently stable and doing well. Respondent's physician prescribed medications for respondent's mental health condition, which respondent took as prescribed. Currently, respondent continues to take one maintenance prescription medication for mental health purposes. Respondent attended individual

psychotherapy sessions with his psychologist from 2003 through 2013, and for a brief time also attended group therapy sessions. In addition, in mid-2006, respondent began attending regular meetings of Alcoholics Anonymous ("AA"), not because he had a problem with alcohol, but because he wanted to learn coping and problem-solving skills. Respondent reports that he attends 20-plus hours of AA meetings per month and has done so for approximately twelve years now.

Family Problems: During the period of the misconduct, respondent was distracted, despondent and experiencing a great deal of stress due to his deteriorating family situation involving a failed attempt to make a blended family with his second wife. The marriage ended in a high-conflict divorce, which became final near the end of the period of misconduct. Respondent no longer has any contact with his ex-wife. (*In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 318 [marital difficulties appropriately considered in mitigation]; *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332, 340-341 [family problems appropriately considered in mitigation].)

Extraordinary Good Character (Std. 1.6(f)): Respondent has presented evidence of his good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of his misconduct, including a rabbi, a reverend, an owner of a manufacturing company, three attorneys, two retired attorneys, a chiropractor, a pharmacist, a dentist, and several other people who know respondent through their synagogue or through Alcoholics Anonymous.

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

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. 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 Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any 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).)

Standard 2.15(b) is applicable to this case and provides that disbarment is the presumed sanction for final conviction of a felony in which the facts and circumstances surrounding the offense involve moral turpitude, unless the most compelling mitigating circumstances clearly predominate, in which case actual suspension of at least two years is appropriate.

In this case, there is no question that the harm is significant. However, the mitigating circumstances are compelling and clearly predominate. Respondent is entitled to significant mitigation for approximately 19 years of discipline-free practice prior to the misconduct, for his evidence of good character, and for cooperating with the State Bar in entering into a comprehensive stipulation to resolve the matter, thereby demonstrating recognition of wrongdoing and saving the State Bar significant resources and time. But most compelling is the mitigation afforded for the extreme emotional, physical and mental disabilities that respondent suffered during the time of the misconduct, which expert testimony would establish were directly responsible for the misconduct. At the time respondent worked for CDC, he suffered from major depression, anxiety disorder and mixed personality disorder, he experienced suicidal ideation, attempted to commit suicide, was despondent and chronically distracted, and suffered a great deal of stress as a result of the deterioration of his second marriage and the resulting high-conflict divorce. Respondent states that his mental, emotional and personal problems were all-consuming at the time. According to respondent's psychologist, respondent's condition was acute and affected his ability to reason, make wise decisions, and operate competently, which led to his misconduct. Respondent has since addressed his emotional, physical and mental disabilitites through a combination of medication management, psychotherapy and participation in AA. Respondent's primary physician and his treating psychologist indicate he stabilized and is doing well.

The fact that respondent practiced law for approximately 19 years without any discipline prior to the misconduct herein, coupled with the extreme emotional, physical and mental disabilities that he suffered during the period of misconduct, as well as respondent's evidence of good character, all suggest that his misconduct was aberrational. Respondent's mental health has since stabilized and more than twelve years have passed since the misconduct.

Respondent has expressed deep regret that he ever became involved with CDC and that he did not actively investigate Vander Tuig and CDC and its claims during his employment. He has expressed that he takes full responsibility for having failed to do so and has acknowledged that he participated in events that led to investor losses and therefore bears a share of the responsibility for those losses.

The particular facts surrounding respondent's offense and the compelling mitigating circumstances demonstrate that a significant actual suspension as suggested by Standard 2.15(b) when compelling mitigating circumstances predominate is appropriate in this case. Conviction of a felony involving moral turpitude in the facts and circumstances surrounding its commission is a serious matter, and significant actual suspension is necessary and appropriate to protect the public, the courts and the legal profession; maintain the highest professional standards; and preserve public confidence in the legal profession. Discipline consisting of a two-year actual suspension and until proof satisfactory to the State Bar Court of respondent's rehabilitation, fitness to practice, and current learning and ability in the general law is appropriate to accomplish the goals of attorney discipline.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of August 30, 2018, the discipline costs in this matter are $7,653.71. 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 and/or any other educational course(s) to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

In the Matter of:	Case Number(s):
ROBERT LEE WALDMAN	09-C-10290-DFM

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.

8/31/18		Robert L. Waldman
Date	Respondent's Signature	Print Name
8/31/18		Robert K. Weinberg
Date	Respondent's Counsel Signature	Print Name
9/4/18		Kristin L. Ritsema
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:	Case Number(s):
ROBERT LEE WALDMAN	09-C-10290-DFM

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.

On page 15 of the stipulation, in paragraph number 31, in the 5th line, the word "inaccurate" is CHANGED to "accurate."

On page 19 of the stipulation, in paragraph number 44, in the 6th line, the year "2005" is CHANGED to "2006."

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).)**

9/21/18
Date

DONALD F. MILES
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 September 21, 2018, 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:

ROBERT K. WEINBERG
19200 VON KARMAN AVE STE 380
IRVINE, CA 92612

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

KRISTIN L. RITSEMA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 21, 2018.

Mazie Yip
Court Specialist
State Bar Court