PUBLIC MATTER

FILED 1 STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL JUL 12 2011 PATSY JEAN COBB, No. 107793 DEPUTY CHIEF TRIAL COUNSEL STATE BAR COURT 3 DANE C. DAUPHINE, NO. 121606 CLERK'S OFFICE SUPERVISING TRIAL COUNSEL LOS ANGELES MONIQUE T. MILLER, No. 212469 4 **DEPUTY TRIAL COUNSEL** 5 1149 South Hill Street Los Angeles, California 90015-2299 6 Telephone: (213) 765-1486 7 8 9 STATE BAR COURT 10 **HEARING DEPARTMENT - LOS ANGELES** 11 12 In the Matter of: Case Nos. 10-O-10519; 11-O-10316 13 DAVID ALLAN DEMANSKI, No. 177979, NOTICE OF DISCIPLINARY CHARGES 14 15 A Member of the State Bar **NOTICE - FAILURE TO RESPOND!** 16 IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE 17 WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL: 18 (1) YOUR DEFAULT WILL BE ENTERED; 19 (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW: 20 (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION 21 AND THE DEFAULT IS SET ASIDE, AND; (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE. 22 SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN 23 ORDER RECOMMENDING YOUR DISBARMENT WITHOUT FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEO., 24 RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA. 25 The State Bar of California alleges: 26 111 27 kwiktag * 018 039 231 28 ///

JURISDICTION

1. David Allan Demanski ("Respondent") was admitted to the practice of law in the State of California on December 1, 1995, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

COUNT ONE

Case No. 10-O-10519
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

- 2. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:
- 3. On or about March 10, 2007, Regina Stevens ("Stevens") employed Respondent to represent her in a personal injury matter arising out of a January 2007 auto accident. Stevens agreed to pay Respondent a contingency fee of a third of the settlement proceeds for his legal services.
- 4. On or about January 5, 2009, Respondent filed a complaint on behalf of Stevens in *Regina Stevens v. Simerjot Kaur Jassal*, San Diego Superior Court Case 37-2009-00080788-CU-PA-CTL (the "Stevens matter").
- 5. In or about early March 2010, Respondent informed Stevens that State Farm Insurance ("State Farm") offered to settle the Stevens matter for \$10,001. Stevens rejected the offer.
- 6. On or about March 21, 2010, Respondent signed his name and Stevens's name to a release of claims which Respondent sent to State Farm. Respondent did not inform Stevens that he sent a release of claims to State Farm, in disregard of Stevens's rejection of State Farm's settlement offer.
- 7. On or about March 26, 2010, State Farm sent a letter to Respondent, enclosing a settlement check in the amount of \$10,001. State Farm also sent a carbon copy of its letter to Respondent to Stevens. Upon receipt of the letter from State Farm, Stevens called Respondent,

1 reiterating that she did not want to settle for \$10,001. Stevens instructed Respondent to take the 2 case to trial. 3 8. On or about March 29, 2010, in disregard of Stevens's rejection of State Farm's 4 settlement offer, Respondent endorsed and signed Stevens's signature on the back of the \$10,001 5 check and deposited the check from State Farm into his client trust account ("CTA") held at Wells Fargo Bank, Account No. xxxxx4384¹, bringing the balance of Respondent's CTA to 6 7 \$10,003,59. 8 9. On or about March 29, 2010, Respondent filed a request for dismissal with prejudice 9 in the Stevens matter. Respondent did not inform Stevens that he had filed for dismissal of the 10 Stevens matter. 11 10. Subsequent to March 29, 2010, the court dismissed the Stevens matter. 11. By failing to take the case to trial as instructed by his client and filing for dismissal of 12 13 the Stevens matter, Respondent intentionally, recklessly, or repeatedly failed to perform legal 14 services with competence. 15 COUNT TWO 16 Case No. 10-O-10519 Business and Professions Code, section 6068(m) [Failure to Inform Client of Significant Development] 17 12. Respondent wilfully violated Business and Professions Code, section 6068(m), by 18 failing to keep a client reasonably informed of significant developments in a matter in which 19 20 Respondent had agreed to provide legal services, as follows: 13. The allegations of Count One are incorporated by reference. 21 14. By not informing his client that: (i) he sent a release of claims to State Farm on her 22 behalf, in disregard of her rejection of State Farm's offer; (ii) he filed a request for dismissal with 23 prejudice on her behalf; and (iv) the Stevens matter was dismissed, Respondent failed to keep a 24

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agreed to provide legal services.

client reasonably informed of significant developments in a matter in which Respondent had

The account number is partially redacted to protect the account.

COUNT THREE Case No. 10-O-10519 Rules of Professional Conduct, rule 4-100(A) [Failure to Maintain Client Funds in Trust Account] 15. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A), by failing to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, as follows: 16. The allegations of Count One are incorporated by reference. 17. On or about April 12, 2010, even though Respondent did not disburse any funds from his CTA to Stevens or any lienholder on behalf of Stevens, the balance in Respondent's CTA fell to \$3.59. Respondent did not maintain funds belonging to Stevens in his CTA. 18. By not maintaining funds belonging to Stevens in his CTA, Respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import. 14 COUNT FOUR Case No. 10-O-10519 16 Business and Professions Code, section 6106 [Moral Turpitude - Misappropriation] 19. Respondent wilfully violated Business and Professions Code, section 6106, by 18 committing an act involving moral turpitude, dishonesty or corruption, as follows: 19 20. The allegations of Counts One and Three are incorporated by reference. 20 21. Respondent intentionally or with gross negligence misappropriated funds received on 22 behalf of Stevens. 22. By misappropriating funds received on behalf of a client, Respondent committed an 23 act involving moral turpitude, dishonesty or corruption. 24

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COUNT FIVE

Case No. 10-O-10519
Business and Professions Code, section 6106
[Moral Turpitude - Misrepresentation]

- 23. Respondent wilfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:
 - 24. The allegations of Count One are incorporated by reference.
- 25. On or about April 28, 2010, Stevens sent Respondent an email, requesting his opinion concerning the testimony of her treating physician at trial. Respondent emailed Stevens back, stating that her two treating physicians will be subpoenaed to testify. By April 28, 2010, Respondent knew that the Stevens matter was already dismissed.
- 26. On or about May 31, 2010, Respondent emailed Stevens, stating that he "received a trial call date of Friday, August 20 for a trial to begin on Monday, August 23 or as soon thereafter based on courtroom availability." By May 31, 2010, Respondent knew that there would be no trial in the Stevens matter.
- 27. By misrepresenting to Stevens that he still anticipated going to trial when Respondent knew that the Stevens matter had already been dismissed, Respondent committed an act involving moral turpitude, dishonesty or corruption.

COUNT SIX

Case No. 10-O-10519
Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar Investigation]

- 28. Respondent wilfully violated Business and Professions Code, section 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against Respondent, as follows:
 - 29. The allegations of Counts One through Five are incorporated by reference.
- 30. On or about December 13, 2010, and January 4, 2011, a State Bar investigator mailed to Respondent a letter regarding a complaint filed by Stevens against Respondent (the "Stevens complaint"). Respondent received the investigator's letters.

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- 31. The investigator's letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Stevens complaint.
- 32. To date, Respondent has not responded to the investigator's letters or otherwise communicate with the investigator.
- 33. By failing to provide the State Bar investigator with a response concerning the allegations of misconduct in the Stevens complaint, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent.

COUNT SEVEN

Case No. 11-O-10316 Rules of Professional Conduct, rule 3-110(A) [Failure to Perform with Competence]

- 34. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as
- 35. On or about August 24, 2007, Wolfwang Liebscher ("Liebscher") and his spouse, Ingrid Liebscher ("Ingrid") (collectively the "Liebschers") were rear ended by an uninsured
- 36. On or about January 3, 2008, the Liebschers employed Respondent to represent them in the personal injury matter resulting from the August 24, 2007 auto accident. Liebsher and Ingrid signed designations of attorney on or about January 3, 2008.
- 37. On or about April 1, 2008, Respondent mailed a letter to Wawanesa Insurance ("Wawanesa"), advising them of his representation of the Liebschers and enclosing the designations of attorney signed by the Liebshers on January 3, 2008.
- 38. On or about April 14, 2008, Wawanesa adjuster Rod Rhoads ("Rhoads") mailed a letter to Respondent, requesting that Respondent have the Liebschers execute patient authorization forms and return them to Rhoads's attention. Respondent received Rhoads's letter and did not respond on behalf of the Liebshers.

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39. Between in or about April and December 2008, Wawanesa made several calls to Respondent's office, requesting a return call regarding the Liebshers' claims. Respondent did not return their calls.

- 40. On or about November 3, 2008, and January 22, 2009, Rhoads mailed letters to Respondent, expressing the urgency of obtaining copies of itemized medical billings, patient authorization forms, medical reports, and the Liebshers' recorded interviews regarding injury and treatment. Respondent received Rhoads's letters and did not respond on behalf of the Liebshers.
- 41. On or about February 17, 2009, Respondent called Wawanesa advising that he had moved his office and set an appointment for the statements of his clients on March 5, 2009. On or about March 4, 2009, Respondent called Wawanesa to reset the appointment. On or about March 10, 2009, Respondent called Wawanesa advising that his clients were out of town for several weeks.
- 42. On or about August 12, 2009, Rhoads mailed a letter to Respondent, again requesting copies of itemized medical billings, patient authorization forms, medical reports, and the Liebshers' recorded interviews regarding injury and treatment. Respondent received Rhoads's letter and did not respond on behalf of the Liebshers.
- 43. On or about September 22, 2009, Wawanesa made a final attempt to call Respondent to determine if he had protected the statute of limitations for the Liebshers' uninsured motorist claim by filing a lawsuit against the tortfeasor. Wawanesa was not able to leave a message for Respondent at that time.
- 44. On or about September 24, 2009, Rhoads mailed a letter to Respondent, advising him that the statute of limitations for the Liebshers' uninsured motorist claim expired on August 23, 2009, and requesting a copy of the lawsuit if the Liebshers intended to present claims under their policy. Respondent received Rhoads's letter and did not respond on behalf of the Liebshers.
- 45. Subsequent to September 24, 2009, Wawanesa checked the Civil Index and determined that Respondent did not file a lawsuit on behalf of the Liebshers to protect the Statute

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of Limitations. Wawanesa also determined that Respondent never demanded arbitration from Wawanesa as an alternative to protect the Statute.

46. In or about August 2010, Liebsher, unable to contact Respondent, called Wawanesa, inquiring about the status of his case. Wawanesa explained that the insurance company was barred from contact with the Liebshers after receiving the letters of representation from Respondent, and that the Liebshers' demand package could not be presented after the two-year Statute of Limitations because Respondent had failed to protect the Statute.

47. By failing to: (i) obtain patient authorization forms, medical reports, and set his clients' recorded interviews regarding injury and treatment; (ii) respond to Wawanesa's letters; and (iii) demand arbitration or file a lawsuit on behalf of his clients to protect the Statute of Limitations, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

COUNT EIGHT

Case No. 11-O-10316
Business and Professions Code, section 6106
[Moral Turpitude - Misrepresentation]

- 48. Respondent wilfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:
 - 49. The allegations of Count Seven are incorporated by reference.
- 50. Subsequent to September 24, 2009, Respondent sent four emails to Liebsher. An email sent on or about October 13, 2009, stated that "[the clients'] claims are going forward nicely." An email sent on or about November 9, 2009, stated that the insurance company would use as arbitrator an individual whom Respondent had purportedly known for many years. A third email sent on or about April 23, 2010, stated that the Liebshers' claims would be resolved by May 28, 2010, "the day the arbitrator said he would submit his final award ruling." A fourth email sent on or about May 31, 2010, stated that the arbitrator had made his decision and Respondent would forward his ruling to Liebsher. At the time Respondent sent those emails to Liebsher, Respondent knew that he did not timely request arbitration on behalf of his clients and that they already lost their cause of action.

1 51. By concealing from his clients the loss of their cause of action resulting from his 2 failure to protect the Statute of Limitations, and misrepresenting that their case was being 3 decided by an arbitrator, Respondent committed acts involving moral turpitude, dishonesty or 4 corruption. 5 **COUNT NINE** 6 Case No. 11-O-10316 Business and Professions Code, section 6068(i) 7 [Failure to Cooperate in State Bar Investigation] 8 52. Respondent wilfully violated Business and Professions Code, section 6068(i), by 9 failing to cooperate and participate in a disciplinary investigation pending against Respondent, as 10 follows: 11 53. The allegations of Counts Seven and Eight are incorporated by reference. 12 54. On or about March 8 and March 23, 2011, a State Bar investigator mailed to 13 Respondent a letter regarding a complaint filed by Liebscher against Respondent (the "Liebscher 14 complaint"). Respondent received the investigator's letters. 15 55. The investigator's letters requested that Respondent respond in writing to specified 16 allegations of misconduct being investigated by the State Bar in the Liebscher complaint. 17 56. To date, Respondent has not responded to the investigator's letters or otherwise 18 communicate with the investigator. 19 57. By failing to provide the State Bar investigator with a response concerning the 20 allegations of misconduct in the Liebscher complaint, Respondent failed to cooperate and 21 participate in a disciplinary investigation pending against Respondent. 22 **NOTICE - INACTIVE ENROLLMENT!** 23 YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE 24 SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO 25 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE 26 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT. 27

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NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: July 12, 2011

By: Monique T. Willer

MONIQUET MILLER

Deputy Trial Counsel

DECLARATION OF SERVICE BY CERTIFIED MAIL

CASE NUMBER: 10-O-10519; 11-O-10316

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles, on the date shown below, a true copy of the within

NOTICE OF DISCIPLINARY CHARGES

in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 71969008911104442125, at Los Angeles, on the date shown below, addressed to:

David A. Demanski 1265 Avocado Blvd. #104 PMB421 El Cajon, CA 92020

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

STATE BAR COURT - HEARING DEPARTMENT - LOS ANGELES

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: July 12, 2011

Signed: ////
Juli Jenewein

Declarant