(Do not write above this line.)

State Bar Court of California
Hearing Department
San Francisco
ACTUAL SUSPENSION

Counsel for the State Bar	Case Number(s):	For Court use only
Laura Huggins **Deputy Trial Counsel** **180 Howard Street** **San Francisco, CA 94105** **(415) 538-2537** Bar # **294148**	**14-O-05621** **15-O-12924** **16-O-13673** **16-O-16721** **16-O-17756** **17-C-05004-CV**	**PUBLIC MATTER** FILED APR 09 2019 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent **Beilal Chatila, Esq.** **Chatila Law, LLP** **306 40th St, Ste C** **Oakland, CA 94609** **(888) 567-9990** Bar # **314413**	Submitted to: **Settlement Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING **ACTUAL SUSPENSION** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter of: **ANTHONY JAMES PALIK** Bar # **190971** 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 2, 1997**.

(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 **21** 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: **10-O-09103-PEM, see page 18, and Exhibit 1 (a certified copy of respondent's prior record of discipline).**

(b) ☒ Date prior discipline effective: **October 19, 2012**

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct, former rule 3-310(E)**

(d) ☒ Degree of prior discipline: **Private Reproval**

(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.

(9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.

(10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.

(11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. **See page 18.**

(12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.

(13) ☒ **Restitution:** Respondent failed to make restitution. **See page 18.**

(14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.

(15) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

(1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.

(2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.

(3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of Respondent's misconduct or to the State Bar during disciplinary investigations and proceedings.

(4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's misconduct.

(5) ☐ **Restitution:** Respondent paid $ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.

(6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced Respondent.

(7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.

(8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct, Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by Respondent, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

(9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond Respondent's control and which were directly responsible for the misconduct.

(10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's personal life which were other than emotional or physical in nature.

(11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of Respondent's misconduct.

(12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pretrial Stipulation, see pages 18.

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

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

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

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

- 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 **two years**, the execution of that suspension is stayed, and Respondent is placed on probation for **three years** with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first **year** 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*
Albert Domingo Garcia Gamez	**$2,500**	**January 19, 2016**
Jose Miguel Cancino-Vera aka Jose Rivas	**$4,500**	**March 24, 2014**

  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:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:	ANTHONY JAMES PALIK
CASE NUMBERS:	14-O-05621; 15-O-12924; 16-O-13673; 16-O-16721; 16-O-17756; 17-C-05004-CV

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 other misconduct warranting discipline.

Case No. 14-O-05621 (Complainant: A. Rayman)

FACTS:

1. On January 1, 2012, respondent moved his law office to 455 Capitol Mall, Suite 231, in Sacramento CA. Thereafter, respondent leased an office to Janell Clayton ("Clayton"), who held herself out as an immigration consultant and operated a business titled *American Dream Immigration Consulting*. Clayton was not a licensed attorney in any jurisdiction.

2. In March 2014, A. Rayman ("Rayman") hired Clayton to file green card applications on behalf of Rayman and his wife and to file a separate E-visa application for Rayman's wife.

3. On March 1, 2014, Rayman paid Clayton $4,500 for her services. Clayton misrepresented to Rayman that she had partnered with an attorney. Clayton did not disclose to Rayman the name of the attorney.

4. On March 4, 2014, Clayton and Rayman executed a Consulting Agreement to memorialize their arrangement. The Consulting Agreement stated that *American Dream Immigration Consulting* was located at 455 Capitol Mall, Suite 231, in Sacramento, California.

5. Between March 2014 and July 2014, Clayton performed no work on Rayman's matter and became increasingly difficult to contact.

6. On July 1, 2014, the California Secretary of State changed Clayton's immigration consultant status to "cease and desist," which occurs when an immigration consultant fails to comply with the provisions governing the filing and maintenance of immigration consultant bonds or has not satisfactorily passed the background check.

7. On July 18, 2014, Rayman visited Clayton's "office" located at 455 Capitol Mall, Suite 231, in Sacramento, California. When he arrived, Rayman noticed Clayton's place of business was located inside the Law Office of Anthony J. Palik. During this visit, Rayman spoke with Larry James ("James"), a disbarred attorney who worked full-time for respondent as a paralegal. James promised to help retrieve Rayman's file from Clayton.

8. On August 27, 2014, after efforts to obtain his file through James proved fruitless, Rayman visited respondent's law office a second time hoping to speak with Clayton. During this encounter, Clayton, James, and respondent, were initially present. Upon learning of Rayman's arrival, Clayton left the office. James informed Rayman of Clayton's departure and made arrangements for Rayman to speak with respondent instead. Respondent greeted Rayman, however, this interaction deteriorated rapidly, portions of which were video recorded on Rayman's cell phone.

9. When Rayman began the video recording, respondent had already called the police to report Rayman as a trespasser. The video shows that Rayman calmly informed respondent of Clayton's actions, including taking money from Rayman in exchange for legal services. Rayman also told respondent about Clayton's refusal to refund the unearned fees and failure to return Rayman's passport. Respondent denied any involvement in the transaction between Clayton and Rayman. The video shows respondent repeatedly told Rayman to leave his office and to seek redress in civil court. Rayman, who was unarmed and calmly sitting in a chair across from respondent's desk, refused to leave until he spoke with Clayton. When respondent told Rayman that Clayton was afraid of him, Rayman responded, "She should be." Growing frustrated, respondent raised his voice, stating, "Get the hell out of my office . . . I am not responsible for this situation." While still on the phone with police, respondent – without provocation or warning – leaned over his desk and tried to grab Rayman's cell phone. After making a lunge for the phone, respondent exclaimed, "I want you to stop recording this." A physical altercation lasting several seconds ensued and respondent was knocked to the ground as Rayman tried to leave. Respondent retrieved ammunition and a .40 caliber Heckler & Koch semiautomatic pistol from his desk drawer and briefly pointed the gun at Rayman. Respondent stated, "Do you see this. There is now a loaded round in the chamber. Get out of my office. You get out of this office. See it's cocked." Respondent then turned the pistol so it pointed upward and continued to display the loaded gun as he followed Rayman – who was already in the process of exiting – to the front entrance. Shortly thereafter, police arrived at respondent's office to investigate Rayman's reported trespass as well as respondent's display of the loaded firearm. As part of their investigation, the responding officers obtained statements from Rayman and respondent. The officers also viewed the video recording and ultimately declined to cite either party.

CONCLUSIONS OF LAW:

10. By drawing and exhibiting a loaded firearm on August 27, 2014, in the presence of Rayman, in a rude, angry, and threatening manner, and by using more force than was reasonable thereby not acting in lawful self-defense, respondent violated California Penal Code section 417(a)(2), in willful violation of Business and Professions Code section 6068(a).

Case No. 15-O-12924 (Complainant: Vianeey Osorio-Remigio)

FACTS:

11. On September 6, 2013, Vianeey Osorio-Remigio ("Osorio") hired respondent to handle her immigration matter. Respondent agreed to submit an application for employment authorization, file an application for adjustment of status, and represent Osorio before the immigration court in connection with her pending removal proceedings.

12. On June 24, 2014, respondent submitted Osorio's application for adjustment of status, supporting documents, and filing fees to the U.S. Department of Homeland Security Citizenship and Immigration Services.

13. Between December 1, 2014, and April 15, 2015, Osorio called respondent's office and left messages inquiring about the status of her application for employment authorization. Respondent received Osorio's messages, but failed to respond to them.

14. On April 15, 2015, Osorio visited respondent's office and terminated his representation.

CONCLUSIONS OF LAW:

15. By failing to respond to Osorio's multiple telephonic requests for a substantive status update between December 1, 2014, and April 15, 2015, respondent failed to respond promptly to reasonable status inquiries of a client, in willful violation of Business and Professions Code section 6068(m).

Case No. 16-O-13673 (Complainant: Albert Domingo Garcia Gamez)

FACTS:

16. Respondent employed Janelle Clayton ("Clayton") as a paralegal in his office from 2014 through 2017. Respondent hired Clayton even though he knew about allegations that she abandoned a client and engaged in the unauthorized practice of law (*see* Case No. 15-O-12924) as well as allegations from a former employer that she misappropriated client funds.

17. In January 2016, Albert Domingo Garcia Gamez ("Garcia") met with respondent and Clayton for an immigration consultation. When the consultation concluded, Garcia believed respondent had agreed to accept his case for a $2,500 "down payment" and that Garcia would need to return with these funds for the representation to begin.

18. On January 19, 2016, Garcia returned to respondent's law office where he was greeted by Clayton and informed that respondent was not present in the office. Clayton prepared an attorney-client fee contract, dated January 19, 2016, stating that respondent would represent Garcia in connection with "referral to immigration court if needed, deferred action, FOIA request, and I-130 petition on behalf of sibling." Garcia gave Clayton the previously agreed-upon deposit of $2,500. Clayton accepted these funds and drafted a "Receipt of Retainer" on respondent's letterhead. Clayton signed the receipt and then gave Garcia copies of the receipt and fee contract. The fee contract was never signed by respondent. Clayton failed to notify respondent that she received $2,500 from Garcia, that she executed a fee contract on respondent's letterhead, that she issued a receipt on respondent's letterhead, and that she accepted copies of immigration documents from Garcia.

19. Between January 19, 2016, and May 16, 2016, Garcia called respondent's law office at least 11 times and left voicemails requesting a status update. Respondent received the voicemails, but did not respond. From these voicemails, respondent was put on notice that Garcia was his client.

20. In May 2016, Garcia obtained respondent's personal cellphone number. On May 16, 2016, Garcia called respondent's personal cellphone and left a voicemail. On that same date, Garcia sent the following text messages to respondent's personal cell: "Hello this is Albert Garcia I've been trying to get [a] hold of you for a while regarding my case for about 3 months now[.] I just want to see what's the next step regarding my case[.]" Respondent received Garcia's communications, but did not reply to Garcia's voicemail or text message.

21. On May 17, 2016 and May 19, 2016, Garcia and respondent exchanged texts and arranged for an appointment at respondent's office on May 20, 2016.

22. On May 20, 2016, at 10:00 a.m., Garcia and his girlfriend arrived at respondent's law office, but neither respondent, nor Clayton, was present for the appointment. Thereafter, Garcia and respondent exchanged texts. In one text, Garcia requested a refund of unearned fees. In response, respondent texted: "I will send you a bill but it looks like we have earned the retainer so don't expect a refund."

23. Thereafter, respondent failed to send Garcia a bill, an accounting of advanced fees, or a refund of unearned fees to Garcia. Respondent performed no work on behalf of Garcia and did not earn any portion of the advanced fees paid.

24. Garcia filed a State Bar complaint against respondent. On July 26, 2016, and February 22, 2018, the State Bar sent letters to respondent requesting a response to the allegations in Garcia's complaint. Respondent received the letters, but failed to respond to them.

25. In 2017, respondent terminated Clayon's employment after he discovered that Clayton accepted multiple clients without respondent's knowledge.

CONCLUSIONS OF LAW:

26. By failing to supervise Clayton and failing to perform any work on behalf of Garcia, respondent recklessly failed to perform with competence, in willful violation of Rules of Professional Conduct, former rule 3-110(A).

27. By failing to refund promptly, upon respondent's termination of employment on May 20, 2016, any part of the $2,500 fee to the client, Garcia, respondent failed to promptly refund any part of a fee paid in advance that has not been earned, in willful violation of Rules of Professional Conduct, former rule 3-700(D)(2).

28. By failing to send Garcia an itemized statement reflecting the work performed on Garcia's case despite promising to send Garcia such a bill on May 20, 2016, respondent failed to render an appropriate accounting to his client regarding those funds upon the termination of respondent's employment on May 20, 216, in willful violation of the Rules of Professional Conduct, rule 4-100(B)(3).

29. By failing to respond to the investigator's letters, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068(i) of the Business and Professions Code.

Case No. 16-O-16721 (Complainant: Jose Rivas)

FACTS:

30. On March 24, 2014, Jose Miguel Cancino-Vera ("Rivas") and Maria Cruz Silva-Guzman ("Silva") hired respondent to represent them in an immigration matter. On that same date, Rivas and Silva paid respondent $4,500 as advanced fees for the immigration matter.

31. On December 15, 2015, Rivas and Silva attended an immigration court hearing. Respondent made arrangements for another attorney to specially appear and continue the case. The attorney did not

speak Spanish and could not communicate with Rivas or Silva, with the exception of being able to provide them with the next hearing date.

32. Thereafter, respondent performed no work on behalf of Rivas and Silva.

33. Between March 2014, and June 2016, Rivas and Silva had difficulty contacting respondent for a status update. In June 2016, Rivas faxed a letter to respondent's law office, notifying respondent of Rivas's upcoming court date in September 2016. Respondent received the letter, but did not reply. On June 14, 2016, Silva, through her daughter, sent respondent a letter asking for an update on the status of the immigration matter. Respondent received the letter, but did not reply.

34. Unable to contact respondent, Rivas and Silva hired a new attorney to represent them in the immigration matter. On August 12, 2016, the new attorney substituted into the immigration case. As of August 2016, respondent was aware that Rivas and Silva terminated his services. Thereafter, respondent failed to provide an accounting of advanced fees to Rivas or Silva.

35. Respondent did not earn any portion of the advanced fees paid by Rivas and Silva. To date, respondent has not refunded any portion of the unearned advanced fees to them.

36. Rivas and Silva filed a State Bar complaint against respondent. On March 3, 2017, and February 15, 2018, the State Bar sent letters to respondent requesting a response to the allegations in Rivas' and Silva's complaint. Respondent received the letters, but failed to respond to them.

CONCLUSIONS OF LAW:

37. By failing to perform any work in the immigration matter on behalf of Rivas and Silva after sending an appearance attorney to a hearing, respondent recklessly failed to perform with competence, in willful violation of Rules of Professional Conduct, former rule 3-110(A).

38. By failing to perform any work of value and therefore not earning any portion of the advanced fee paid, respondent failed to refund promptly, upon termination of employment in August 2016, any part of the $4,500 fee to the clients, in willful violation of Rules of Professional Conduct, former rule 3-700(D)(2).

39. By failing to render an appropriate accounting to the clients regarding those funds upon respondent's termination of employment in August 2016, respondent failed to render appropriate accounts, in willful violation of Rules of Professional Conduct, former rule 4-100(B)(3).

40. By failing to respond to the investigator's letters, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068(i) of the Business and Professions Code.

Case No. 16-O-17756 (Complainant: Ana Orellana)

FACTS:

41. On May 7, 2013, Ana Orellana ("Orellana") hired respondent to represent her in immigration proceedings and to file an I-589 Application for Asylum and for Withholding of Removal Proceedings (the "asylum application"). Pursuant to 8 U.S.C section 1158(a)(2)(B), the asylum

application was to be submitted within one year of Orellana's entry to the U.S.: by April 17, 2014. Respondent was aware of the asylum application deadline.

42. On the same date, Orellana agreed to pay respondent an advanced fee of $5,000, with an initial deposit of $2,500 due immediately and the remainder to be paid in installments of $150 per month. Respondent signed a declaration acknowledging receipt of the $2,500 deposit. Orellana did not make any of the installment payments.

43. Respondent did not file the asylum application by April 17, 2014. On July 15, 2014, about three months after the deadline elapsed, respondent filed Orellana's asylum application. Respondent never informed Orellana of the late filing.

44. In July 2016, Orellana retained new counsel and learned of respondent's late filing. The new counsel was ultimately able to obtain asylum for Orellana.

45. On November 3, 2016, the new counsel informed respondent that Orellana had terminated respondent's employment. Thereafter, respondent failed to provide an accounting for the advanced fees paid by Orellana.

46. Orellana filed a State Bar complaint against respondent. On April 21, 2017, the State Bar sent a letter to respondent requesting a response to the allegations in Orellana's complaint. Respondent received the letter, but failed to respond to it.

CONCLUSIONS OF LAW:

47. By failing to timely file an asylum application, by failing to file a motion to accept late filing, and by failing to notify Orellana of the untimely filing, respondent recklessly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, former rule 3-110(A).

48. By failing to provide Orellana an accounting after respondent was terminated in November 2016, respondent failed to provide Orellana and the State Bar with an accounting of fees, in willful violation of Rules of Professional Conduct, former rule 4-100(B)(3).

49. By failing to respond to the investigator's letter, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068(i) of the Business and Professions Code.

Case No. 17-C-05004-CV (Conviction Proceeding)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

50. 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.

51. On March 16, 2016, the San Francisco County District Attorney's Office filed a criminal complaint in San Francisco County Superior Court, case number 16004926, charging respondent with three counts of violation the Penal Code, as follows: Count One – violation of Penal Code section 626.9(h) [Possession of a Firearm on a University or College Campus], a felony; Count Two – violation

of Penal Code section 25400(a)(2) [Concealed Firearm on Person]; and Count Three – violation of Penal Code section 25850(a) [Carrying a Loaded Firearm].

52. On March 27, 2017, respondent's Motion for Demurrer was sustained and Count One was dismissed.

53. A criminal jury trial was held in Department 19 of San Francisco Superior Court on July 24, 25, and 26, 2017.

54. On July 26, 2017, a jury found respondent guilty of Counts Two and Three.

55. On August 28, 2017, the superior court suspended the imposition of sentence and placed respondent on probation for a period of three years. The court ordered that respondent shall, as a condition of his probation, serve eight days in jail, undergo one year of treatment from a licensed psychologist, not possess any firearm or other dangerous/deadly weapon, and be subject to search and seizure, among other conditions.

56. On October 27, 2017, the Review Department of the State Bar Court filed an order 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 offenses involved moral turpitude or other misconduct warranting discipline.

FACTS:

57. On the evening of March 5, 2016, respondent and his wife got into a heated argument about the family's finances and other challenges in the marriage. At the time, respondent had not seen two of his young children from a previous marriage in over a year. The argument occurred in respondent's home where respondent stored his .40 caliber Heckler & Koch semiautomatic pistol ("handgun" or "firearm"). Distraught and suicidal, respondent loaded the handgun and chambered a round. Respondent placed the loaded handgun into his inner jacket pocket and then left his home in the Sunset District of San Francisco. Respondent walked for about two hours before reaching a restaurant in the area of Haight-Ashbury, where he stopped for several slices of pizza. At 3:00 a.m., the restaurant closed and respondent got on a late night "owl" bus traveling to the ferry building. At the ferry's ticket terminal, respondent looked at the schedule and realized the ferry would not depart for some time. Respondent then walked to the BART station. Respondent rode a BART train back and forth between Pittsburg and Bay Point. Growing tired, respondent eventually got off the train and boarded the N Judah Muni Metro light rail with the intention of heading home. On one of the stops, respondent realized he was not well and exited the bus to look for help. Over the course of approximately 12 hours, respondent wandered the streets of San Francisco, dined at a restaurant, and repeatedly boarded public transit while carrying a loaded firearm in his jacket.

58. On March 6, 2016, at approximately 1:15 p.m., respondent voluntarily went to the emergency department located within the University of California, San Francisco Medical Center at Parnassus Heights. Respondent was admitted and promptly placed in a secure area on a psychiatric hold because respondent reported that he might harm himself.

59. Respondent spoke with triage nurse Jason Gerke ("Gerke") and stated, "I feel like hurting myself." Gerke asked respondent how he planned to hurt himself and respondent said, "I would jump off the bridge." Respondent did not mention he was in possession of a loaded firearm.

60. Orderly AJ Farzan ("Farzan") inventoried respondent's possessions and noticed the outline of a firearm in the inside chest pocket of respondent's jacket. Farzan retrieved the firearm from respondent's jacket and handed it over to Allied Barton Security Officer Michael Paolucci ("Paolucci"), who unloaded the magazine, cleared the chamber, and locked the slide open. Paolucci observed there was a live round in the chamber of the firearm.

61. Sergeant Brian Perry of the University of California Police Department ("Sergeant Perry") responded to the UCSF medical center and met with respondent. Upon Sergeant Perry's arrival, respondent stated, "I figured you would be coming to talk to me sometime." Respondent further stated that he was aware of the handgun when he entered the emergency department but felt it was more important to seek medical attention than to worry about the firearm.

CONCLUSIONS OF LAW:

62. The facts and circumstances surrounding the above-described violations did not involve moral turpitude but did involve other misconduct warranting discipline.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has a prior record of discipline in case number 10-O-09103, effective October 19, 2012. Respondent was privately reproved for misconduct in one client matter in 2012 for improperly accepting employment adverse to his client, in violation of former rule 3-110(E) of the Rules of Professional Conduct. There, respondent threatened legal action against a former client when the client tried to evict respondent's girlfriend/paralegal from a private residence. Respondent received mitigation for practicing law over 12 years without a prior record of discipline. No aggravating factors were present.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent's 13 acts of misconduct, in addition to the criminal conviction, represent multiple acts of wrongdoing.

Failure to Make Restitution (Std. 1.5(m)): To date, respondent had not paid any portion of unearned fees to Garcia or Rivas and Silva.

MITIGATING CIRCUMSTANCES.

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).)

In this matter, respondent committed 13 acts of professional misconduct and suffered a misdemeanor conviction for carrying a loaded concealed weapon. Standard 1.7(a) requires that where a respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

The most severe sanction applicable to respondent's misconduct is found in standard 2.12(a), which applies to respondent's violation of Business and Professions Code section 6068(a). Standard 2.12 (a) provides that disbarment or actual suspension is the presumed sanction for a violation of the duties required of an attorney under Business and Professions Code section 6068(a). ." Standard 1.8(a) also applies since respondent has a prior record of discipline. Standard 1.8(a) provides: "If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust."

Here, respondent committed misconduct in four client matters and failed to comply with laws in two separate matters. Respondent also failed to cooperate in three State Bar investigations. Respondent's misconduct is serious.

To determine the appropriate level of discipline, consideration must also be given to the aggravating and mitigating circumstances. In aggravation, respondent engaged in multiple acts of misconduct and has a prior record of discipline. In mitigation, respondent acknowledged his wrongdoing by entering into the present stipulation. Given the seriousness of respondent's misconduct, it would not be manifestly unjust to impose greater discipline in this matter in accordance with standard 1.8(a).

Respondent is entitled to mitigation for entering into a pretrial stipulation, but any mitigation is tempered by his failure to cooperate in the investigations.

In light of the serious misconduct, factors in aggravating and limited mitigation, a long actual suspension with a lengthy probationary period is warranted under the standards.

Case law is instructive. In *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr 263, the Court recommended a six-month actual suspension for an attorney who failed to perform in a single client matter, failed to communicate, made excuses for her unavailability, and inflated her invoice when the client requested a refund. The attorney's misconduct was aggravated by her lack of insight and prior record of discipline that stemmed from serious misconduct in two client matters. Similar to *Seltzer*, respondent's misconduct largely arises from his failure to communicate and failure to perform in client matters. While the aggravating circumstances in *Seltzer* outweigh the aggravation present here, the breadth and scope of respondent's misconduct warrants a higher level of discipline. With respect to respondent's violation of laws, it should be noted that respondent was the lawful registered owner of the firearm at issue. However, his conduct exhibited a degree of recklessness that warrants discipline.

On balance, a one-year actual suspension with a requirement that respondent will remain suspended until he proves rehabilitation under standard 1.2(c)(1) and pays restitution, is necessary to protect the public and will serve the purposes of attorney discipline.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

Case No.	Count	Alleged Violation
14-O-05621	One (A)	Business and Professions Code section 6106
15-O-12942	Two (A)	Business and Professions Code section 6068(a)
15-O-12942	Two (C)	Business and Professions Code section 6106
15-O-12942	Two (D)	Rules of Professional Conduct, former rule 4-200(A)
16-O-13673	Three (B)	Rules of Professional Conduct, former rule 1-300(A)
16-O-13673	Three (E)	Rules of Professional Conduct, former rule 3-700(A)(2)
16-O-16721	Four (C)	Rules of Professional Conduct, former rule 3-700 (D)(1)
16-O-17756	Five (B)	Rules of Professional Conduct, former rule 3-700(A)(2)
16-O-17756	Five (C)	Rules of Professional Conduct, former rule 3-700(D)(2)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of March 7, 2019, the discipline costs in this matter are $13,916. 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.

In the Matter of:	Case Number(s):
ANTHONY JAMES PALIK	17-C-05004-CV 14-O-05621 15-O-12924 16-O-13673 16-O-16721 16-O-17756

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.

Date		
3/14/19	Respondent's Signature	Anthony James Palik Print Name
3/14/19	Respondent's Counsel Signature	Beilal Chatila Print Name
3/14/19	Deputy Trial Counsel's Signature	Laura Huggins Print Name

(Do not write above this line.)

In the Matter of: ANTHONY JAMES PALIK	Case Number(s): 14-O-05621 (15-O-12924; 16-O-13673; 16-O-16721; 16-O-17756); 17-C-05004 (Consolidated)

ACTUAL SUSPENSION ORDER

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

☐ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.

☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.

☐ All Hearing dates are vacated.

1. On page 6 of the stipulation, an "X" is inserted in the box next to paragraph E.(1);
2. On page 13 of the stipulation, in paragraph #16, "(see Case No. 15-O-12924)" is deleted, and in its place is inserted "(see Case No. 14-O-05621)";
3. On page 14 of the stipulation, in paragraph #28, "rule 4-100(B)(3)" is deleted, and in its place is inserted "former rule 4-100(B)(3)";
4. On page 18 of the stipulation, in the paragraph entitled Prior Record of Discipline, "in violation of former rule 3-110(E)" is deleted, and in its place is inserted "in violation of former rule 3-310(E)"; and
5. On page 20 of the stipulation, in the paragraph entitled Dismissals, all references to "15-O-12942" are deleted, and in their place is inserted "15-O-12924."

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).)**

April 4, 2019
Date

Pat E. McElroy
PAT E. McELROY, JUDGE PRO TEM
Judge of the State Bar Court

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **ANTHONY JAMES PALIK,** **Member No. 190971,** A Member of the State Bar.	Case No.: **10-O-09103-PEM** **DECISION & PRIVATE REPROVAL**

Introduction[1]

In this disciplinary proceeding, respondent **ANTHONY JAMES PALIK** was originally charged with six counts of misconduct in a single client matter, but as noted *post*, the court dismissed two of the six counts at trial on the motion of the Office of the Chief Trial Counsel of the State Bar of California (State Bar). The four counts on which the case was tried charge respondent with (1) failing to respond to the client's reasonable status inquiries; (2) entering into a business transaction with the client without complying with the requirements under the law; (3) failing to competently perform legal services; and (4) improperly accepting employment adverse to the client.

The court finds, by clear and convincing evidence, that respondent is culpable only on the last count charging respondent with improperly accepting employment adverse to the client. In light of the limited nature and extent of the found misconduct, the two mitigating circumstances, and the absence of any aggravating circumstances, the court will impose, on respondent, a

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code unless otherwise indicated.

private reproval with a condition attached requiring that respondent attend and successfully complete the State Bar's Ethics School within one year.

Significant Procedural History

The State Bar initiated this proceeding by filing a notice of disciplinary charges (NDC) against respondent on November 21, 2011. On December 22, 2011, respondent filed a response to the NDC. A three-day hearing was held on June 21, 28, and 29, 2012. At trial, the court dismissed counts one and three of the NDC on the motion of the State Bar. Furthermore, the court allowed the State Bar to amend count six to charge respondent with violating rule 3-310(E) (accepting employment adverse to a client or former client).

The State Bar was represented by Deputy Trial Counsel Maria Oropeza. Respondent was represented by Attorney Scott J. Drexel. Following closing arguments on June 29, 2012, the court took the matter under submission for decision.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 2, 1997, and has been a member of the State Bar of California since that time.

Case No. 10-O-09103-PEM

Facts

Respondent's Representation of John Nichols

On January 26, 2007, John Nichols employed Attorney Fernando F. Chavez and his law firm on a contingent fee basis to represent Nichols as the plaintiff in a wrongful-employment-termination lawsuit that was then pending in the Sacramento County Superior Court. At that time, respondent was employed by Attorney Chavez's law firm as an associate attorney. Respondent worked for Attorney Chavez until the beginning of March 2009 when he was laid off. Even after respondent was laid off, both respondent and Attorney Chavez continued to

jointly represent Nichols on his wrongful-termination claims. Respondent, however, acted as Nichols's primary counsel as respondent's name is on all the relevant pleadings. (See exhibits 2 & 3.)

In November 2007, respondent dismissed Nichols's superior court wrongful-termination lawsuit. And, in December 2007, respondent filed a new wrongful-termination lawsuit for Nichols in the United States District Court for the Eastern District of California. The defendants in the federal lawsuit noticed Nichols's deposition for March 17, 2009. That March 17, 2009 deposition was later reset for July 7, 2009, at respondent's request. The July 7, 2009 deposition, however, was cancelled because there was some confusion over who was representing Nichols (i.e., respondent or Attorney Chavez).

Apparently Nichols was never notified that his July 7, 2009 deposition had been cancelled as he appeared by himself for his deposition on July 7. Thereafter, Nichols's deposition was noticed for September 4, 2009. According to respondent, he confirmed with the defendants that Nichols would appear for his September 4, 2009 deposition. Nonetheless, on July 30, 2009, the defendants filed a motion to compel Nichols's deposition and a request for monetary sanctions against Nichols "and/or" Nichols's attorney.

On August 19, 2009, the defendants sent Nichols a fourth amended notice of deposition, resetting Nichols's September 4, 2009 deposition for September 17, 2009. At that point, the Chavez law firm confirmed, with the defendants, that it would produce Nichols for his deposition on September 17, 2009. (Exhibit 7 at p. 2.)

Neither respondent, Attorney Chavez, nor the Chavez law firm filed a response to the defendants' July 30, 2009 motion to compel and request for sanctions. Nor did any of them appear at the September 2, 2009 hearing on that motion and request. On September 4, 2009, the federal court granted the defendants' motion to compel and ordered respondent and Attorney

Chavez to show cause in writing why Nichols's lawsuit should not be dismissed for want of prosecution and why they should not be sanctioned. Thereafter, respondent and Attorney Chavez filed affidavits in response to the federal court's September 4, 2009 order to show cause (OSC).

On September 17, 2009, respondent and Nichols appeared for Nichols's noticed deposition and were ready and willing to proceed, but the defense counsel refused to proceed in light of the federal court's September 4, 2009 OSC.[2]

On October 9, 2009, the federal court filed on order discharging its September 4, 2009 OSC. Even though the federal court found that respondent and Attorney Chavez violated the court's local rules by failing to file a response to the defendants' motion to compel and request for sanctions and by failing to appear at the September 2 hearing on the defendants' motion and request without establishing any justification for their noncompliance, the federal court discharged its OSC without sanctioning respondent or Attorney Chavez because the defendants withdrew their request for sanctions.

Respondent told the defendants that he would be on vacation from about December 23, 2009, through early January 2010. Nonetheless, on December 23, 2009, the defendants filed a motion of summary judgment on all of Nichols's claims. Instead of filing an opposition to the defendants' summary judgment motion when respondent returned from vacation in January 2010, respondent filed an ex parte motion to continue the hearing on the defendant's summary judgment motion, essentially requesting an extension of time to file Nichols's opposition, which was granted.

Respondent filed Nichols's opposition to the defendant's summary judgment motion on February 22 and 23, 2010. The opposition respondent filed did not include a response to the

[2] Defense counsel claimed to have sent a letter, to the Chavez firm, cancelling the September 17 deposition, but she could not produce a copy of the letter to verify her claim.

defendants' statement of undisputed facts as required by the federal court's local rules. In addition, the opposition contained unauthenticated exhibits and argument that did not cite facts. On February 26, 2010, respondent filed a request for an extension of time to file an untimely separate statement of disputed facts, another affidavit, and Nichols's amended declaration. (See exhibit 11, at p. 1.) Even though the federal court did not formally rule on respondent's February 26, 2010 request for extension of time, the federal court effectively granted respondent's request by considering the untimely separate statement of disputed facts, affidavit, and Nichols's amended declaration that respondent filed when the court ruled on the defendants' motion for summary judgment.

On May 3, 2010, the federal court granted the defendants' motion for summary judgment and ordered that judgment be entered for the defendants and that Nicholas's lawsuit be closed.

Respondent's Living Situation

The state bar alleges that respondent, after being employed by Nichols, told Nichols that he was homeless and that he and his girlfriend/legal assistant, Michele Foley-Koder, needed a place to live. The bar further alleges that Nichols thereafter arranged for respondent and Foley-Koder to stay rent-free in a one-bedroom condominium owned by Nichol's wife, Sue Nichols, from about December 2009 until about May 25, 2010.

The record establishes that Nichols had no ownership in the condominium as it belonged to Sue Nichols as her separate property and that the condominium had been in foreclosure for about two years before Nichols employed respondent. The record further establishes that Sue Nichols and Foley-Koder entered into an agreement for Foley-Koder to live in the condominium. (See, e.g., exhibits C at p. 3, Q.) The record further establishes that respondent never lived in the condominium even though he may have stored, in the condominium, some boxes of files relating to Nichols's wrongful-termination claims and even though respondent may have attended a

meeting of the condominium association's neighborhood watch committee. Only Foley-Koder and her college-age daughter lived in the condominium from about October 2009 until May 2010.[3]

In about April 2010, Sue Nichols asked Foley-Koder to vacate her condominium by May 31, 2010. After the federal court granted the defendants' summary judgment motion in Nichols's wrongful-termination lawsuit on May 3, 2010, the relationship between Nichols and respondent deteriorated rapidly as did the relationship between Sue Nichols and Foley-Koder. By mid-May 2010, Sue Nichols accelerated the date by which Foley-Koder had to vacate her condominium. About that same time, Nichols made statements about guns, which made Foley-Koder very nervous and caused her to vacate Sue Nichols's condominium in haste.

In her haste to vacate the condominium, Foley-Koder left various items of personal property, which she believes that Nichols and his wife improperly disposed of. In May 2010, respondent agreed to act as Foley-Koder's attorney in connection with her claims that Nichols and his wife unlawfully entered the condominium and converted items of Foley-Koder's personal property. And, on May 26, 2010, respondent sent a demand letter to Nichols and his wife, identifying himself as the attorney for Foley-Koder and effectively threatening them with a lawsuit.

On May 26, 2010, respondent also sent his former client Nichols two emails. In one of the emails, respondent accused Nichols of having taken bribes. After May 26, 2010, respondent took no further action against Nichols or Nichols's wife on behalf of Foley-Koder.

///

[3] This finding is supported by credible testimony from respondent, Foley-Koder, Kathy Tong, and Hau Bui. Tong, who is respondent's landlord in San Francisco, testified that, except for the month of February 2010, respondent had been her tenant since February 2009. Bui, who has known respondent for 15 years, testified that respondent stayed with him for 15-20 days in February and March 2010.

Conclusions of Law

Count One (§ 6106 [Moral Turpitude])

As noted *ante*, count one was dismissed at trial on the motion of the State Bar.

Count Two (§ 6068, subd. (m) [Failure to Communicate])

In count two, the State Bar charges that respondent willfully violated section 6068, subdivision (m), which provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. Specifically, the State Bar charges that respondent violated section 6068, subdivision (m) because respondent allegedly failed to respond to Nichols's January 12, 2010 emails asking respondent when a responsive pleading was due on the defendants' motion for summary judgment. The record fails to establish the charged violation by clear and convincing evidence. Accordingly, count two is DISMISSED with prejudice.

Count Three (§ 6068, subd. (a) [Comply with Laws])

As noted *ante*, count three was dismissed at trial on the motion of the State Bar.

Count Four (Rule 3-300 [Avoiding Interests Adverse to a Client))

In count four, the State Bar charges that respondent willfully violated rule 3-300, which provides that an attorney must not enter into a business transaction with a client or knowingly acquire an ownership, security, possessory, or other pecuniary interest adverse to a client unless the transaction/acquisition and its terms are reasonable and fair to the client and are fully disclosed and transmitted in writing to the client in a reasonably understandable manner; the client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to do so; and the client thereafter consents in writing to the terms of the transaction/acquisition.

Count four fails to clearly set forth what business transaction respondent entered into with Nichols or what pecuniary interest respondent acquired that was adverse to Nichols. In fact, the factual allegations in count four, if proved, would not establish a rule 3-300 violation; instead, they would establish that respondent accepted, as a gift, condominium lodging from Sue Nichols, whom respondent never represented.[4] More important, the record fails to establish a rule 3-300 violation.

The record establishes that respondent never lived in the condominium and that Foley-Koder's made her condominium living arrangements with Sue Nichols. To establish a rule 3-300 violation, the State Bar must, at a minimum, establish that the attorney either was a party to or financially gained from the business transaction or acquisition. (*In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 123-124, citing *In the Matter of* Fandey (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767, 776-778.) The State Bar has failed to prove that respondent was a party to the condominium living arrangements that Foley-Koder made with Sue Nichols or that respondent financially gained from those arrangements.

In short, the record fails to establish, by clear and convincing evidence, that respondent entered into a business transaction with his client Nichols or that respondent acquired an ownership, possessory, security, or other pecuniary interest adverse to Nichols within the meaning of rule 3-300.[5] Accordingly, count four is DISMISSED with prejudice.

///

///

---

[4] Moreover, even if respondent had represented Sue Nichols, the rules do not prohibit attorneys accepting gifts from their clients. (See, generally, Official Discussion to rule 4-400 ["A member may accept a gift from a member's client, subject to general standards of fairness and absence of undue influence."].)

[5] Nor does the record establish, by clear and convincing evidence, that respondent somehow engaged in overreaching or conflict of interest with respect to the condominium living arrangements that Foley-Koder made with Sue Nichols.

Count Five (Rule 3-110(A) [Failure to Perform Legal Services Competently])

In count five, the State Bar charges that respondent willfully violated rule 3-110(A), which provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. Specifically, the State Bar charges that respondent violated rule 3-110(A) "when he failed to respond to opposing counsel's request to confirm that he would appear at Nichols' March 17, 2009 deposition, failed to notify Nichols of the deposition, failed to respond to a July 22, 2009 meet and confer letter sent by opposing counsel in an attempt to reschedule the deposition, failed to respond to the opposing party's July 30, 2009 motion for sanctions, and failed to appear at the September 2, 2009 hearing on the motion for sanctions." The State Bar further charges that respondent violated rule 3-110(A) when he failed to comply with the federal court's local rules and submitted untimely documents in opposition to the defendants' motion for summary judgment.

Whether respondent failed to respond to opposing counsel's request to confirm Nichols's March 17, 2009 deposition and whether respondent failed to notify Nichols of the March 17 2009 deposition are irrelevant in light of the fact that the opposing counsel rescheduled the March 17, 2009 deposition at respondent's request. Moreover, even though respondent did not timely file Nichols's opposition to the defendants' motion for summary judgment, the federal court considered all of respondent's pleadings when it ruled on the merits of the defendants' motion. In addition, the fact that the federal court ruled in favor of the defendants and against Nichols on the summary judgment motion does not suggest, much less establish, that respondent's legal representation of Nichols was incompetent in willful violation of rule 3-110(A).

The remaining alleged failures deal with miscommunications between counsel regarding Nichols's deposition and with respondent's failures to respond to the defendants' motion to

compel and request for sanctions and to appear at the September 2, 2009 hearing on that motion and request. These remaining failures fall short of establishing that respondent intentionally, recklessly, or repeatedly failed to perform legal services competently in willful violation of rule 3-110(A). At best, they establish negligent legal representation. However, as the review department has repeatedly held, "negligent legal representation, even that amounting to legal malpractice, does not establish a rule 3-110(A) violation. [Citation.]" (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 149.) In sum, count five is DISMISSED with prejudice.

Count Six (Rule 3-310(E) [Accepting Adverse Employment])

In count six, the State Bar charges that respondent willfully violated rule 3-310(E), which provides that an attorney must not, without the informed written consent of a client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the attorney obtained confidential information material to the new employment.

In his May 26, 2010 letter to Nichols and Nichols's wife, respondent clearly identified himself as the attorney for Foley-Koder and threatened legal action against Nichols and his wife on Foley-Koder's behalf. (Exhibit 12, at p. 26.)

Moreover, the accusation that Nichols had taken bribes in one of respondent's May 26, 2010 emails to Nichols had to come from information respondent received while representing Nichols in Nichols's wrongful-termination lawsuit. In that lawsuit, the defendants alleged that one of the reasons they terminated Nichols's employment was because he had accepted bribes.

This court finds that respondent used confidential information material to his prior representation of Nichols in the sending of his May 26, 2010 demand letter and emails to Nichols. In sum, the court finds that respondent willfully violated rule 3-310(E) when he

accepted employment from Foley-Koder without first obtaining Nichols's informed written consent.

Aggravation[6]

The State Bar did not establish any aggravating circumstances.

Mitigation

Respondent has no prior record of discipline. His more than 12 years of misconduct-free practice from December 1997 through May 2010 is a strong mitigating circumstance. (Std. 1.2(e)(i); see also Rules Proc. of State Bar, rule 5.106(B)(5).) Moreover, respondent's misconduct did not cause any client harm, which is also a mitigating circumstance. (Std. 1.2(e)(iii).)

Discussion

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 2.10 is applicable to respondent's willful violation of rule 3-310(E). Standard 2.10 provides:

> Culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproval or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

[6] All references to standards (Stds.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Standard 1.3 provides:

> The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

"The imposition of attorney discipline does not issue from a fixed formula but from a balanced consideration of all relevant factors, including aggravating and mitigating circumstances." (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 316.) The court is unaware of any case involving similar misconduct. Accordingly, the court looks to other cases involving conflicting interests. Specifically, the court finds that *Connor v. State* Bar (1990) 50 Cal.3d 1047 and *Ames v. State* Bar (1973) 8 Cal.3d 910, which respondent cites and in which the attorneys improperly acquired pecuniary interests adverse to their clients, are instructive on discipline.

In *Connor v. State Bar*, the attorney acquired title to his clients' property without complying with former rule 5–101 (the predecessor to rule 3-300) in order to help the client avoid foreclosure. No aggravating circumstance is articulated. In mitigation, the attorney had 16 years of misconduct-free practice. In addition, the client consented to the transaction. The Supreme Court imposed a public reproval on the attorney.

In *Ames v. State Bar*, the attorneys, who represented the holders of a junior encumbrance on real property involved in litigation, purchased the senior encumbrance in order to allow the clients more time to raise money to prevent foreclosure by the senior encumbrance. At that time, however, former rule 4 provided that "A member of the State Bar shall not acquire an interest adverse to his client." No aggravating circumstance is articulated. In mitigation, the attorneys had no prior discipline, acted in what they thought were the best interests of the clients, and had

no intent to deceive or defraud. In addition, the clients consented to the transaction. The Supreme Court imposed a private reproval on the attorneys.

Even though respondent's conduct was not altruistic like the conduct of the attorneys in *Connor v. State Bar* and *Ames v. State Bar*, respondent did not acquire a pecuniary interest adverse to Nichols. On balance, the court concludes that the appropriate level of discipline for respondent's rule 3-310(E) violation is a private reproval with an Ethics-School condition attached.

Private Reproval

The court orders that respondent **ANTHONY JAMES PALIK** is **PRIVATELY REPROVED** for engaging in the professional misconduct found in this proceeding.[7] (Bus. & Prof. Code, §§ 6077, 6078; Rules Proc. of State Bar, rule 5.127(A)&(D).) This reproval is effective upon the finality of this decision. (Rules Proc. of State Bar, rule 5.127(A); see also Rules Proc. of State Bar, rules 5.112-5.115, 5.151.) The following condition, which the court finds will serve both to protect the public and to further Palik's interests, is attached to the reproval. (Cal. Rules of Court, rule 9.19(a); Rules Proc. of State Bar, rule 5.128.) Palik's failure to comply with the following condition is punishable as a willful violation of rule 1-110 of the Rules of Professional Conduct of the State Bar of California. (Cal. Rules of Court, rule 9.19.)

///

///

[7] Even though the State Bar will not publish this private reproval in the California Bar Journal, the reproval is part of Palik's official State Bar membership records (including those records maintained on the State Bar's web page) and, as such, will be disclosed in response to public inquiries. (Rules Proc. of State Bar, rule 5.127(D).) The State Bar may notify any complainant as to Palik's misconduct (whether a former client, other attorney, court personnel, or member of the public) of the imposition of this private reproval. (*Ibid.*) Moreover, the record of this proceeding remains public and, therefore, available for public inspection upon request. Finally, because respondent has been privately reproved for his misconduct, neither party is entitled to costs. (§ 6086.10, subd. (a); Rules Proc. of State Bar, rules 5.127(D), 5.131(A)&(D).)

Reproval Condition

Within one year after the effective date of his reproval, Anthony James Palik is to attend and satisfactorily complete the State Bar's Ethics School and to provide satisfactory proof of his successful completion of that program to the State Bar's Office of Probation in Los Angeles. The program is offered periodically both at 180 Howard Street, San Francisco, California 94105-1639 and at 1149 South Hill Street, Los Angeles, California 90015-2299. Arrangements to attend the program must be made in advance by calling (213) 765-1287 and by paying the required fee. This reproval condition is separate and apart from Palik's Minimum Continuing Legal Education (MCLE) requirements; accordingly, he is ordered not to claim any MCLE credit for attending and completing this program. (Accord, Rules Proc. of State Bar, rule 3201.)

Dated: September 13, 2012.

Pat E. McElroy
PAT E. McELROY
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 Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on September 13, 2012, I deposited a true copy of the following document(s):

DECISION & PRIVATE REPROVAL

in a sealed envelope for collection and mailing on that date as follows:

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

SCOTT JOHN DREXEL
1325 HOWARD AVE #151
BURLINGAME, CA 94010

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

☐ by overnight mail at , California, addressed as follows:

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

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

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

Maria J. Oropeza, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 13, 2012.

George Hue
Case Administrator
State Bar Court

SCOTT J. DREXEL, State Bar No. 65670
Law Office of Scott J. Drexel
1325 Howard Avenue, # 151
Burlingame, California 94010
Telephone: (650) 918-8328
Attorney for Respondent
ANTHONY J. PALIK

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **ANTHONY J. PALIK,** **No. 190971,** **A Member of the State Bar.**	Case No. 10-O-09103 **RESPONSE TO NOTICE OF DISCIPLINARY CHARGES** [Rule 5.43, Rules Proc. of State Bar]

ADDRESS FOR SERVICE OF DOCUMENTS

Pursuant to Rule 5.43(C) of the Rules of Procedure of the State Bar of California ("Rules of Procedure"), all pleadings and other documents filed in this proceeding shall be served and/or mailed to Scott J. Drexel, counsel for Respondent Anthony J. Palik ("Respondent") at the address set forth above in the caption of this Response to Notice of Disciplinary Charges ("Response").

///

///

JURISDICTION

Respondent admits that he was admitted to the practice of law in California on December 2, 1997, that he was a member of the State Bar of California at all times pertinent to the charges contained in the Notice of Disciplinary Charges ("NDC") in this proceeding and that he is presently a member of the State Bar of California.

PRELIMINARY STATEMENT

Contrary to the allegations of the NDC in this proceeding, Respondent did not commit any act of professional misconduct. Respondent respectfully asserts that this proceeding should be dismissed. Any statement in this Response that is not a specific admission of an alleged fact should be considered to be a denial of that alleged fact.

COUNT ONE

Paragraph 2: Respondent denies that he committed any act of moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106 as alleged in Count One.

Paragraph 3: Respondent admits the allegations of this paragraph.

Paragraph 4: Respondent admits the allegations of this paragraph.

Paragraph 5: Respondent admits the allegations of this paragraph.

Paragraph 6: Respondent denies the allegation that he remained Nichols' counsel "at all subsequent times pertinent hereto" but otherwise admits the remaining allegations of this paragraph. Respondent states that his representation of Nichols terminated on May 5, 2010.

Paragraph 7: Respondent admits the allegations of this paragraph.

Paragraph 8: Respondent admits that, on or about January 10, 2010, he asked Nichols to loan him $1,500. Respondent denies each and every remaining allegation of this paragraph.

///

///

Paragraph 9: Respondent admits the allegations of the first sentence of this paragraph. Respondent sent a number of e-mails to Nichols. The e-mails referenced in this paragraph of Count One of the NDC are not complete and do not constitute the entirety of the e-mail exchanges between Respondent and Nichols, as a result of which the context and tone of the e-mails are entirely changed. Respondent denies that he threatened Nichols in any manner.

Paragraph 10: Respondent denies the allegations of this paragraph.

COUNT TWO

Paragraph 11: Respondent denies that he failed to respond to reasonable status inquiries of a client in willful violation of Business and Professions Code section 6068, subdivision (m), as alleged in Count Two of the NDC in this proceeding.

Paragraph 12: In responding to this paragraph, Respondent hereby incorporates by reference his responses contained in Count One of the NDC in this proceeding.

Paragraph 13: Respondent admits that a request for information about the due date of a responsive pleading constitutes, at least in the abstract, a reasonable status inquiry.

Paragraph 14: Respondent denies the allegations of this paragraph.

COUNT THREE

Paragraph 15: Respondent denies that he failed to support the Constitution and laws of the United States and of the State of California in willful violation of Business and Professions Code section 6068, subdivision (a), as alleged in Count Three of the NDC in this proceeding.

Paragraph 16: In responding to this paragraph, Respondent hereby incorporates by reference his responses contained in Count One of the NDC in this proceeding.

Paragraph 17: Respondent denies the allegations of this paragraph.

Paragraph 18: Respondent denies the allegations of this paragraph.

Paragraph 19: Respondent denies the allegations of this paragraph.

///

COUNT FOUR

Paragraph 20: Respondent denies that he acquired a possessory or pecuniary interest adverse to a client in willful violation of Rule 3-300 of the Rules of Professional Conduct, as alleged in Count Four of the NDC in this proceeding.

Paragraph 21: Respondent denies the allegations of this paragraph.

Paragraph 22: Respondent denies the allegations of this paragraph.

COUNT FIVE

Paragraph 23: Respondent denies that he intentionally, recklessly and/or repeatedly failed to perform legal services with competence in willful violation of Rule 3-110(A) of the Rules of Professional Conduct, as alleged in Count Five of the NDC in this proceeding.

Paragraph 24: Respondent denies the allegations of this paragraph.

Paragraph 25: Respondent denies the allegations of this paragraph.

COUNT SIX

Paragraph 26: Respondent denies that he represented a client in a matter and, at the same time in a separate matter, accepted as a client a person whose interest in the first matter was adverse to the client in the first matter, in willful violation of Rule 3-310(C)(3) of the Rules of Professional Conduct, as alleged in Count Six of the NDC in this proceeding.

Paragraph 27: In responding to this paragraph, Respondent hereby incorporates by reference his responses contained in Counts One and Four of the NDC in this proceeding.

Paragraph 28: Respondent admits the allegations of this paragraph.

Paragraph 29: Respondent admits the allegations of this paragraph.

Paragraph 30: Respondent admits the allegations of this paragraph.

Paragraph 31: Respondent denies the allegations of this paragraph.

Paragraph 32: Respondent denies the allegations of this paragraph.

///

FIRST AFFIRMATIVE DEFENSE

Respondent respectfully submits that each and every Count of the NDC in this proceeding fails to state a disciplinable offense against Respondent.

Dated: December 22, 2011

Scott J. Drexel
Attorney for Respondent
Anthony J. Palik

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and an employee in the County of San Mateo, State of California. I am over the age of eighteen and am not a party to the within proceeding. My business address is 1325 Howard Avenue, #151, Burlingame, California 94010.

On December 22, 2011, I served the following document:

RESPONSE TO NOTICE OF DISCIPLINARY CHARGES

In the Matter of Anthony J. Palik, State Bar Court Case No. 10-O-09103

on the interested parties in this proceeding by causing to be placed a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at San Francisco, California, addressed as follows:

Maria J. Oropeza, Deputy Trial Counsel
Office of the Chief Trial Counsel
The State Bar of California
180 Howard Street
San Francisco, California 94105

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Burlingame, California, this 22nd day of December, 2011.

SCOTT J. DREXEL

PUBLIC MATTER

FILED

NOV 21 2011

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL
JAYNE KIM, No. 174614
ACTING CHIEF TRIAL COUNSEL
PATSY J. COBB, No. 107793
DEPUTY CHIEF TRIAL COUNSEL
LAWRENCE J. DAL CERRO, No. 104342
ASSISTANT CHIEF TRIAL COUNSEL
DONALD R. STEEDMAN, No. 104927
SUPERVISING TRIAL COUNSEL
MARIA J. OROPEZA, No. 182660
ASSIGNED DEPUTY TRIAL COUNSEL
ANTHONY G. MATRICCIANI, No. 214730
ASSIGNED DEPUTY TRIAL COUNSEL
180 Howard Street
San Francisco, California 94105-1639
Telephone: (415) 538-2132

STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of: ANTHONY J. PALIK, No. 190971, A Member of the State Bar	Case No. 10-O-09103 NOTICE OF DISCIPLINARY CHARGES

NOTICE - FAILURE TO RESPOND!

IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:

(1) YOUR DEFAULT WILL BE ENTERED;
(2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;
(3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE, AND;
(4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE. SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN ORDER RECOMMENDING YOUR DISBARMENT WITHOUT FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ., RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

The State Bar of California alleges:

JURISDICTION

1. Anthony J. Palik ("respondent") was admitted to the practice of law in the State of California on December 2, 1997, 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-09103
Business and Professions Code, section 6106
[Moral Turpitude]

2. Respondent wilfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty and corruption, as follows:

3. As of September 15, 2007, respondent was employed by attorney Fernando Chavez.

4. In or about September, 2007, John Nichols employed attorney Fernando Chavez on a contingent fee basis to represent him in a wrongful employment termination lawsuit that was already pending in superior court (*John Nichols v. County of Sacramento et al.*, case no. 06AS02430, Sacramento Superior Court).

5. On or about September 15, 2007, respondent substituted into the case on behalf of the law offices of Fernando Chavez.

6. At a later point in time, respondent left Chavez's employment, but both respondent and Chavez remained Nichol's counsel at all subsequent times pertinent hereto, and respondent acted as Nichol's primary counsel in both the superior court case and the federal court case discussed below.

7. Respondent dismissed the superior court case and, on or about December 20, 1997, filed a new lawsuit in the United States District Court, Eastern District of California, case number 2:07-CV-02759 GEB EFB).

8. On January 10, 2010, respondent solicited Nichols for a $1,500 loan, but on January 11, 2010 Nichols declined to loan respondent that much money.

9. On or about January 12, 2010, Nichols sent emails to respondent asking when a responsive pleading was due. On or about January 12, 2010, respondent sent three responsive emails. First, respondent sent an email asking Nichols to wait until the next day with the proviso "...that is assuming I am still practicing law." When Nichols sent a further email asking again for an answer, respondent sent two more emails to his client. The first stated:

"Why don't you back off BEFORE I KICK YOUR GOD DAMNED ASS!!" (capitalization original). The second email stated:

"Get on your [ ] Harley and drive to San Francisco so I can kick your ass!" (Expletive deleted).

10. By sending these threatening emails to a client, respondent committed conduct involving moral turpitude, dishonesty or corruption.

COUNT TWO

Case No. 10-O-09103
Business and Professions Code, section 6068(m)
[Failure to Respond to Client Inquiries]

11. Respondent wilfully violated Business and Professions Code, section 6068(m), by failing to respond to status inquiries in a matter in which respondent had agreed to provide legal services, as follows:

12. The allegations contained in Count One are hereby incorporated by this reference.

13. Nichol's requests for information as to the due date of the responsive pleading constituted reasonable status inquiries.

14. By responding as he did and by failing to provide the requested information, respondent failed to respond to reasonable status inquiries in a matter in which respondent had agreed to provide legal services.

//

//

//

/

COUNT THREE

Case No. 10-O-09103
Business and Professions Code, section 6068(a)
[Failure to Comply With Laws]

15. Respondent wilfully violated Business and Professions Code, section 6068(a), by failing to support the Constitution and laws of the United States and of this state, as follows:

16. The allegations contained in Count One are hereby incorporated by this reference.

17. By sending the above-quoted threatening emails, respondent violated his fiduciary duties to Nichols.

18. Respondent sent the January 12 emails with the intent to annoy and harass Nichols. By sending these threatening emails to his client, the second of which contained obscene language, respondent violated California Penal Code section 653m subdivision (a).

19. By violating his fiduciary duties and California Penal Code section 653m subdivision (a), respondent failed to support the laws of this state.

COUNT FOUR

Case No. 10-O-09103
Rules of Professional Conduct, rule 3-300
[Business Transaction with a Client]

20. Respondent wilfully violated Rules of Professional Conduct, rule 3-300, by acquiring a possessory and pecuniary interest adverse to a client without complying with the requirements of rule 3-300(a), (b) and (c) as follows:

21. After being employed by Nichols, respondent told Nichols that he was homeless and that he and his girlfriend/legal assistant, Michele Foley-Koder, needed a place to stay. Nichols thereafter arranged for respondent and Foley-Koder to stay rent-free in a condominium owned by Nichol's wife. Respondent and Foley-Koder stayed in the condominium rent-free for a period of time ending on or about May 25, 2010.

22. Respondent accepted this lodging without complying with any of the requirements of rule 3-300(a), 3-300(b), and 3-300(c). Specifically,

(A) The transaction was not fair and reasonable to the client because the client had already contracted for legal representation on a contingent fee basis and was not required to supply housing to his counsel or his counsel's girlfriend.

(B) Respondent failed to fully disclose the terms of the transaction to Nichols;

(C) Respondent failed to transmit the terms of the transaction to Nichols in writing;

(D) Respondent failed to advise Nichols in writing that the client may seek the advice of an independent lawyer of the client's choice;

(E) Respondent failed to give Nichols a reasonable opportunity to seek that advice; and

(F) Respondent failed to obtain Nichol's written consent to the terms of the transaction.

COUNT FIVE
Case No. 10-O-09103
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

23. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, and repeatedly failing to perform legal services with competence, as follows:

24. Respondent failed to perform competent legal services for Nichols when he failed to respond to opposing counsel's request to confirm that he would appear at Nichols' March 17, 2009 deposition, failed to notify Nichols of the deposition, failed to respond to a July 22, 2009 meet and confer letter sent by opposing counsel in an attempt to reschedule the deposition, failed to respond to the opposing party's July 30, 2009 motion for sanctions, and failed to appear at the September 2, 2009 hearing on the motion for sanctions. Further information relating to respondent's failure to perform competent legal services in respect to the deposition and resulting motions and hearings is set forth in the court orders dated September 4 and October 9, 2009, true and correct copies of which are attached hereto as Exhibits 1 and 2 and incorporated by this reference.

25. Respondent failed to perform competent legal services for Nichols in responding to the defendant's motion for summary judgment. Specifically, respondent failed to comply with local rules and submitted untimely documents. Further information relating to respondent's failure to perform competent legal services with respect to the summary judgment motion is set forth in the Order Granting Defendants' Motion for Summary Judgment dated May 3, 2010, a true and correct copy of which is attached hereto as Exhibit 3 and is incorporated by this reference.

COUNT SIX

Case No. 10-O-09103
Rules of Professional Conduct, rule 3-310(C)(3)
[Actual Conflict - Representing Multiple Clients]

26. Respondent wilfully violated Rules of Professional Conduct, rule 3-310(C)(3), by representing a client in a matter and at the same time in a separate matter accepting as a client a person or entity whose interest in the first matter was adverse to the client in the first matter, without the informed written consent of each client, as follows:

27. The allegations contained in Counts One and Four are hereby incorporated by this reference.

28. On or about May 25, 2010, respondent agreed to act as Michele Foley-Koder's attorney in connection with her claims that Nichols and Nichols' wife unlawfully entered the condominium and converted items of Foley-Koder's personal property.

29. On or about May 26, 2010, respondent sent a demand letter to Nichols and his wife, identifying himself as attorney for Foley-Koder, threatening a lawsuit and demanding $100,000.00.

30. On or about May 26, 2010, respondent sent two emails to Nichols. The first email stated: "I always considered you to be a relatively unintelligent and dishonest lowlife. Now I know that it [sic] first impression was correct." The second email stated, "You did take bribes, didn't you Jack? You and your white trash wife."

31. At the time he sent these May 26, 2010 emails and letter, respondent was still attorney of record for Nichols in the United States District Court litigation.

32. By accepting employment from Michele Foley-Koder and sending the May 26, 2010 letter and emails, respondent represented a client in a matter and at the same time in a separate matter accepted as a client a person or entity whose interest in the first matter was adverse to the client in the first matter, without the informed written consent of each client.

NOTICE - INACTIVE ENROLLMENT!

YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.

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: November 21, 2011

By: _____
Donald R. Steedman
Supervising Trial Counsel

MARIA J. OROPEZA, No. 182660
ANTHONY G. MATRICCIANI, No. 214730
ASSIGNED DEPUTY TRIAL COUNSEL

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN NICHOLS, aka
JACK NICHOLS,

Plaintiff,

vs.

COUNTY OF SACRAMENTO, et al.,

Defendants.

/

No. CIV S-07-2759 GEB EFB

ORDER AND ORDER TO SHOW CAUSE

Pending for decision before this court are defendants' motion to compel the deposition of plaintiff John Nichols and defendants' request for monetary sanctions against plaintiff and/or his attorney in the amount of $250.00. Dckt. No. 37. The matters were heard on this court's law and motion calendar on September 2, 2009. Attorney Jeri Pappone appeared on behalf of defendants. Neither plaintiff nor his attorney of record, Anthony James Palik, filed an opposition to the motion or appeared at the hearing. According to the docket, Mr. Palik is employed at the Law Office of Fernando F. Chavez (the "Chavez firm").

BACKGROUND

Defendants originally noticed a deposition of plaintiff for March 17, 2009. Decl. of John Lavra in Supp. of Mot. to Compel (Dckt No. 37-3), ¶ 2. The deposition did not go forward on

EXHIBIT
tabbies
1

that date, however, because plaintiff's counsel requested that it be rescheduled. *Id.* Then, on May 29, 2009, defendants noticed a deposition of plaintiff for July 7, 2009, a date which was agreed upon between counsel. *Id.* ¶ 3.

The week before the deposition, plaintiff called defendants' counsel and stated that he planned to attend the July 7 deposition and that the Chavez firm was now representing him in this action, not Mr. Palik. *Id.*, Ex. 1. Defendants' counsel informed plaintiff that her firm had not received a substitution of counsel or any indication from the Chavez firm that they were now representing plaintiff, and informed plaintiff that as long as he was represented by counsel, he should not contact defendants' counsel directly. *Id.*

On July 6, 2009, defendants' counsel's law office contacted both the Chavez firm and Mr. Palik to confirm that the deposition was going forward the next day. *Id.* ¶ 4. The receptionist at the Chavez firm was unaware of any deposition on calendar, and Mr. Palik stated that he was not going to appear at the deposition since he had signed a substitution of counsel. *Id.* According to Mr. Palik, the substitution of counsel had not been filed because it was in plaintiff's possession and plaintiff would not communicate with him. *Id.*

Also on July 6, 2009, defendants' counsel sent a letter to Mr. Palik and the Chavez firm, informing them that if someone could not confirm by noon that day that the deposition was going forward on July 7, defendants' counsel would have to cancel the deposition and file a motion to compel. *Id.* ¶ 5. Defendants' counsel did not receive a response to the letter. *Id.*

On July 7, 2009, plaintiff appeared by himself for his deposition and indicated that he was unaware that the deposition was cancelled. *Id.*, Ex. 2. Plaintiff again stated that he was not represented by Mr. Palik, but was represented by Fernando Chavez. *Id.* The deposition did not go forward. *Id.* That same day, defendants' counsel wrote a letter to Mr. Palik explaining that plaintiff had showed up alone at the deposition, requesting that Mr. Palik instruct plaintiff not to contact defendants' counsel directly, and informing Mr. Palik that because no response was received to the July 6 letter, defendants' counsel was going to move forward with a motion to

compel and/or motion to dismiss, and seek monetary sanctions. *Id.*

On July 22, 2009, defendants' counsel wrote a letter to Mr. Palik requesting to meet and confer regarding this matter. *Id.* ¶ 7. Defendants' counsel did not receive a response to the letter. *Id.*

Therefore, on July 30, 2009, defendants filed the instant motion. Neither plaintiff nor his counsel have filed an opposition to the motion.

DISCUSSION

Defendants are entitled to depose plaintiff. Fed. R. Civ. P. 30(a)(1) ("A party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2)."). Accordingly, defendants' motion to compel plaintiff's deposition is granted.[1]

Defendants are also entitled to recover their expenses for having to file the instant motion. Federal Rule of Civil Procedure 37(a)(5)(A) provides that if a motion to compel is granted "the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5)(A); *see also* Fed. R. Civ. P. 37(d)(1)(A) ("The court where the action is pending may, on motion, order sanctions if: . . . a party . . . fails, after being served with proper notice, to appear for that person's deposition."). Plaintiff and his counsel had an opportunity to be heard regarding defendants' request for sanctions, but failed to appear at the September 2, 2009 hearing.

////

---

[1] Defendants' motion to compel seeks an order specifically compelling plaintiff to attend a deposition on September 4, 2009. However, in light of the below order to show cause why this action should not be dismissed, an order setting the date for completion of plaintiff's deposition will not issue until it is determined whether the case will proceed further. If the action is not dismissed, and defendants are unable to depose plaintiff prior to the October 26, 2009, discovery cutoff date in this action, the undersigned will recommend to the district judge that the Scheduling Order be modified to extend the discovery deadline for the limited purpose of completing the deposition of plaintiff.

Defendants' motion seeks monetary sanctions in the amount of $250.00, based on defendants' counsel's time spent "preparing the notice of motion, the points and authorities, [counsel's] declaration, and the correspondence to Mr. Palik." Dckt. No. 37-3, ¶ 8. If defendants desire, on or before September 17, 2009, they may file a further declaration regarding any additional fees spent preparing for and/or attending the September 2, 2009 hearing. After all responses to the orders to show cause discussed below are due, the court will determine the amount of sanctions and apportion those sanctions against the responsible parties as appropriate.

Additionally, in light of plaintiff and his counsel's failure to file anything in response to defendants' motion to compel and their failure to appear at the September 2, 2009 hearing, and defendants' inability to depose plaintiff in this action, plaintiff and his counsel of record will be ordered to show cause why this action should not be dismissed for failure to prosecute, and to inform the court regarding the status of plaintiff's representation in this action. Failure of plaintiff to timely file a response to the order to show cause will be deemed a request for voluntary dismissal of this action.

Further, because Mr. Palik is plaintiff's attorney of record and has neither filed a substitution of attorneys or a motion to withdraw as counsel, as required by the Local Rules, Mr. Palik will be ordered to show cause why he should not be sanctioned for failing to appear at his client's July 7, 2009 deposition; failing to respond to defendants' counsel's efforts to meet and confer; failing to oppose defendants' motion to compel; failing to appear at the September 2, 2009 hearing; and if no longer representing plaintiff, failing to file a substitution of attorneys and/or a motion to withdraw as counsel.

Finally, because the Chavez firm is still the law firm of record in this action, and because plaintiff indicated on at least two occasions that he is represented by the Chavez firm, the Chavez firm will be ordered to show cause why (1) if it currently represents plaintiff in lieu of Mr. Palik, it should not be sanctioned for failing to appear at plaintiff's July 7, 2009 deposition; failing to respond to defendants' counsel's efforts to meet and confer; failing to oppose

defendants' motion to compel; failing to appear at the September 2, 2009 hearing; and failing to ensure that a substitution of counsel was on file, and (2) if it is only plaintiff's law firm of record as a result of Mr. Palik's representation of plaintiff, it should not be sanctioned for failing to comply with the aforementioned obligations in this action when Mr. Palik failed to do so.[2]

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. Defendants' motion to compel plaintiff's deposition is granted;

2. Defendants' request for sanctions under Fed. R. Civ. P. 37(d)(1)(A) for the cost of pursuing the motion is granted;

3. Plaintiff and/or his counsel are ordered to show cause, in writing, on or before September 17, 2009, why this action should not be dismissed for failure to prosecute and are ordered to inform the court, in writing, on or before September 17, 2009, regarding the status of plaintiff's representation in this action;

4. Mr. Palik is ordered to show cause, in writing, on or before September 17, 2009, why he should not be sanctioned for the reasons stated above;

5. The Law Office of Fernando F. Chavez is ordered to show cause, in writing, on or before September 17, 2009, why it should not be sanctioned for the reasons stated above;

6. The Clerk of Court is directed to serve a copy of this order on Mr. Palik, at the email address listed on the docket, and on the Law Office of Fernando F. Chavez, at the physical address listed on the docket; and,

////

////

---

[2] The court notes that Mr. Chavez's name has not appeared on any of the pleadings in this action (other than in the name of the law firm), and Mr. Chavez has never been designated as counsel for service, as authorized by Local Rule 83-182(c)(1). However, as the law firm of record in this action, and as Mr. Palik's current or former employer, the Chavez firm should have stayed apprised of the pending actions in which it is listed on the docket as the law firm of record.

The court is informed and believes that Mr. Palik is no longer employed at the Chavez firm. However, the Chavez firm is still listed as Mr. Palik's employer on the docket.

7. Both Mr. Palik and the Law Office of Fernando F. Chavez are ordered to serve plaintiff with a copy of this order, and file a proof of service thereof, within three days of receipt of this order.

SO ORDERED.

DATED: September 4, 2009.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN NICHOLS, aka
JACK NICHOLS ,

Plaintiff, No. CIV S-07-2759 GEB EFB

vs.

COUNTY OF SACRAMENTO et al.,

Defendants. ORDER

_____/

On September 2, 2009, this court heard defendants' motion to compel the deposition of plaintiff John Nichols and defendants' request for monetary sanctions against plaintiff and/or his attorneys. Dckt. Nos. 37, 38. Neither plaintiff nor his counsel filed an opposition or statement of non-opposition to the motion and neither appeared at the September 2, 2009 hearing. On September 4, 2009, the court granted plaintiff's motion to compel and request for sanctions, and ordered plaintiff and/or his counsel to show cause why this action should not be dismissed for failure to prosecute, and to inform the court regarding the status of plaintiff's representation in this action. Dckt. No. 39 at 4. The court further ordered Anthony Palik, plaintiff's attorney of record, "to show cause why he should not be sanctioned for failing to appear at his client's July 7, 2009 deposition; failing to respond to defendants' counsel's efforts to meet and confer; failing

EXHIBIT
tabbies
2

to oppose defendants' motion to compel; failing to appear at the September 2, 2009 hearing; and if no longer representing plaintiff, failing to file a substitution of attorneys and/or a motion to withdraw as counsel." *Id.* Still further, because the Law Offices of Fernando F. Chavez (the "Chavez firm") was still the law firm of record in this action, and because plaintiff indicated on at least two occasions that he was represented by the Chavez firm, the court ordered the Chavez firm "to show cause why (1) if it currently represents plaintiff in lieu of Mr. Palik, it should not be sanctioned for failing to appear at plaintiff's July 7, 2009 deposition; failing to respond to defendants' counsel's efforts to meet and confer; failing to oppose defendants' motion to compel; failing to appear at the September 2, 2009 hearing; and failing to ensure that a substitution of counsel was on file, and (2) if it is only plaintiff's law firm of record as a result of Mr. Palik's representation of plaintiff, it should not be sanctioned for failing to comply with the aforementioned obligations in this action when Mr. Palik failed to do so." *Id.* at 4-5.

On September 16, 2009, both Mr. Chavez and Mr. Palik filed affidavits in response to the order to show cause. Dckt. Nos. 42, 43. Mr. Chavez's affidavit states that the Chavez firm "is still currently representing the Plaintiff in this action" and that the "firm should not be sanctioned for not producing Mr. Nichols" at the July 7, 2009 deposition because six days before defendants filed their motion to compel, "the parties had resolved any confusion regarding representation, agreeing upon a date to conduct the deposition," and pursuant to that agreement, plaintiff was to be deposed on September 4, 2009. Dckt. No. 42, ¶¶ 4-5. The affidavit states that on August 5, 2009, Mr. Palik confirmed via email to defendants' counsel's assistant that he would be appearing for the September 4, 2009 deposition; that on August 19, 2009, defendants' counsel sent plaintiff a Fourth Amended Notice of Deposition, rescheduling the deposition to take place on September 17, 2009; and that the Chavez firm confirmed to defendants that it would produce plaintiff for the September 17, 2009 deposition. *Id.* ¶¶ 5-6. According to the affidavit, because the Chavez firm "has continued to cooperate with Defendants' counsel to produce Mr. Nichols for the continuance of Mr. Nichols' initial deposition, which was originally conducted by

Defendants on January 17, 2007, . . . the court should reconsider the sanctioning the [Chavez firm] so that the parties may conclude their discovery and focus on resolving the case as to its merits." *Id.* ¶ 7.

Mr. Palik's September 16, 2009 affidavit adopts the statements made in Mr. Chavez's affidavit and further states that although his regular employment with the Chavez firm was terminated on March 1, 2009, Mr. Palik has since agreed to assist Mr. Chavez with plaintiff's representation and will continue to act as the attorney of record. Dckt. No. 43, ¶¶ 4-5. Additionally, on September 17, 2009, Mr. Palik filed a further affidavit stating that on September 17, 2009, at 10:00 a.m., plaintiff and Mr. Palik "were present in the offices of defense counsel, ready, willing, and able to proceed with the defendants' deposition of our client," but defense counsel informed Mr. Palik that she had sent a letter to the Chavez firm canceling the deposition in light of the present OSC. Dckt. No. 44, ¶ 4. However, defense counsel "could not present a copy of the letter for inspection," and an affidavit from Mili E. Gonzalez, a paralegal at the Chavez firm, states that the Chavez firm did not receive "any correspondence from defendants or their counsel canceling the plaintiff's deposition previously set by defendants for September 17, 2009." *Id.* ¶ 4, Dckt. No. 45, ¶ 3.

Although Mr. Palik and Mr. Chavez's affidavits address what they perceive to be defense counsel's failures with regard to plaintiff's deposition, the affidavits do not address all of the issues raised in the court's September 4, 2009 order and do not satisfy the court that Mr. Palik and Mr. Chavez should not be sanctioned for their failures in this action. Specifically, the affidavits do not address why Mr. Palik and/or Mr. Chavez should not be sanctioned for failing to file either an opposition or statement of non-opposition to defendants' motion to compel and for failing to appear at the September 2, 2009 hearing, as required by Local Rule 78-230. Mr. Palik and Mr. Chavez are clearly in violation of the court's local rules and establish no justification that excuses their non-compliance. Nonetheless, on September 28, 2009, defendants filed a notice of withdrawal of their request for sanctions. Dckt. No. 46. Therefore, the court

reluctantly discharges the September 4, 2009 order to show cause and declines to exercise its power to impose sanctions *sua sponte*. However, Mr. Palik and Mr. Chavez are admonished that any further violations of the Local Rules or the court's orders will result in sanctions.

SO ORDERED.

DATED: October 9, 2009.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN NICHOLS, aka JACK NICHOLS,

Plaintiff,

v.

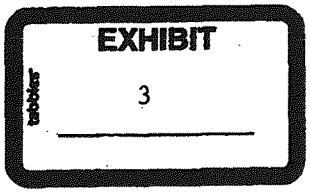
COUNTY OF SACRAMENTO, CHERYL CRESON, STEVEN PEDRETTI, KEITH FLOYD, GEORGIA COCHRAN, CARL MOSHER, THOR LUDE, HAROLD BIXLER, and JOHN HALLIMORE,

Defendants.

2:07-cv-02759-GEB-EFB

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

On December 23, 2009, Defendants filed a motion for summary judgment on all of Plaintiff's claims, or in the alternative, seek summary adjudication of Plaintiff's claims. Instead of filing an opposition, Plaintiff filed an *ex parte* motion to continue the hearing on Defendants' motion, essentially requesting an extension to file his opposition, which was granted. (See Docket No. 49-56.) Plaintiff subsequently filed his opposition to Defendants' motion on February 22 and 23, 2010. This opposition does not comply with the local rule requiring Plaintiff to include a response to Defendants' statement of undisputed facts, and contains unauthenticated exhibits and argument that does not cite facts. Plaintiff subsequently filed a request on February 26, 2010, for a 4-day extension of time to file an untimely separate statement of disputed facts, another affidavit, and Plaintiff's amended declaration. (See Docket Nos. 70-73.) Defendants countered arguing the request should be denied, but that "[i]f the



court . . . allow[ed] another late filing by Plaintiff, . . . that the court issue a further briefing schedule to permit Defendants to file a Reply brief to the new material." (Id. 1:24-26.) Plaintiffs' second untimely filing has been considered. Further briefing by Defendants is unnecessary since Plaintiff has failed to controvert Defendants' evidence with specific facts.

I. BACKGROUND

a. Plaintiff's Allegations

Plaintiff alleges four claims in his Complaint, all of which arise from termination of his employment with the County of Sacramento Building Inspection Division. Plaintiff alleges in his first claim that Defendants County of Sacramento ("County"), Cheryl Creson ("Creson"), Steven Pedretti ("Pedretti"), and Keith Floyd ("Floyd") violated his First Amendment rights by "terminating Plaintiff's employment with the County" for "report[ing] the [D]efendants' illegal activities . . . to the Sacramento County Grand Jury, as well as to other County representatives and law enforcement officials." (Compl. ¶ 26.) Plaintiff alleges in his second claim that Defendants County, Creson, Pedretti, and Floyd conspired to violate Plaintiff's First Amendment rights. (Id. ¶ 32.) Plaintiff alleges in his third claim that all Defendants knew of the conspiracy to deprive Plaintiff of his First Amendment rights and neglected to prevent deprivation of Plaintiff's rights. (Id. ¶ 38.) Lastly, Plaintiff alleges Defendants violated California Labor Code Section 1102.5 by "retaliat[ing] [against] [P]laintiff's reporting of illegal and corrupt activities . . . ." (Id. ¶ 44.)

b. Summary Judgment Factual Record

"Near the end of 2003, [Pedretti], Director of the

Department of County Engineering and Administration, contacted management consultant, Pamela Hurt-Hobday ("Hobday"), to work with the Building Inspection Division to improve communication amongst the employees, and to create more collegial working environment. (Statement of Undisputed Fact ("SUF") ¶ 1.) "As part of her work, Hobday met with and interviewed employees of all levels within Building Inspection." (Id. ¶ 2.) "Sometime at the end of 2003 or beginning of 2004, Hobday reported to Pedretti concerns that there were various improprieties and potentially illegal activity occurring within the Division regarding relations between building inspectors and contractors and developers." (Id. ¶ 3.) "In an effort to uncover the truth, Hobday was encouraged to continue meeting with staff and conducting interviews." (Id. ¶ 4.) "Around the same period, Plaintiff contacted [Floyd], Deputy Counsel for Sacramento County, with concerns he had related to the personnel reviews occurring in the Municipal Services Agency at that time." (Id. ¶ 5.) "In December of 2003, [Plaintiff] went to Floyd with concerns regarding the workplace practices of then Principal Building Inspectors, Barry Hutchens ["Hutchens"] and Doug Ladd ["Ladd"], specifically related to alleged special considerations being given to contractors that might be contributors to a charitable organization run by them known as 'The Red Tag Breakfast Club.'" (Id. ¶ 6.) Plaintiff "also informed Floyd that during this time with the Building Inspection Division he had received gifts from contractors." (Id. ¶ 7.) "Specifically, Nichols admitted to three incidents of accepting gifts from contractors: one involved receipt of a new washing machine and dryer; another involved receipt of the cost of a vacation to Hawaii for he and his family; and the third involved the installation of a new concrete driveway at his

residence." (Id. ¶ 8.) Plaintiff counters what he received were loans, not gifts. (Pl's Response to SUF ¶ 8; Forncrook Aff. ¶¶ 2, 3, 4, 5; Saca Aff. ¶¶ 2, 3, 4, Silva Aff. ¶ 3).

"On January 2, 2004, . . . Pedretti and Floyd met with Plaintiff at County Counsel's office to discuss Plaintiff's concerns relating to Hutchens and Ladd, and his receipt of gifts from contractors." (Id. ¶ 9.) "At this time, Plaintiff revealed he had not included the received gifts in the required Statement of Economic Interest in violation of County policy." (Id. ¶ 10.) "Upon Plaintiff informing . . . Pedretti of the violations of his job duties and improprieties with various contractors, Pedretti actually encouraged Plaintiff to come forward and tell what he knew." (Id. ¶ 56.) "Although Plaintiff inquired as to the status of his employment after making the report, Pedretti could not guarantee what action would be taken in response." (Id. ¶ 11.) "The manager of Human Resources, defendant Georgia Cochran [("Cochran")] was contacted to pursue a further investigation of the issues reported by Plaintiff." "Upon further review, it was determined that none of the gifts Plaintiff receive[d] from contractors appeared on any Statement of Economic Interest Form." (Id. ¶ 13.)

Further, "[i]n March 2004, Plaintiff directed a subordinate employee to issue a building permit in violation of Building Inspection Division procedures, without getting proper approvals and without collecting the required fees." (Id. ¶ 14.) "Also in March 2004, Plaintiff directed a subordinate to issue a permit for a project in the city of Rancho Cordova without proper approval, in violation of a directive from management." (Id. ¶ 15.)

"Based on the foregoing actions of Plaintiff, [Creson],

Administrator of the Sacramento County Municipal Services Agency approved a six (6) month demotion of plaintiff from Supervising Building Inspector to Building Inspector II." (Id. ¶ 16.) "A Notice of Proposed Disciplinary Action for demotion was prepared, issued and served on Plaintiff on July 14, 2004." (Id. ¶ 17.) "An Order of Disciplinary Action for a six (6) month demotion was effective September 1, 2004." (Id. ¶ 18.) "Plaintiff does not dispute that some type of discipline was justified following his admittance of violating county policy regarding reporting gifts on his conflict of interest statement, but merely felt the discipline was too harsh." (Id. ¶ 49.) "Plaintiff appealed the discipline to the Civil Service Commission, which upheld the demotion." (Id. ¶ 19.) As a result, [Plaintiff] was demoted to the position of Building Inspector II, and assigned to work at the Building Inspection Division office at 827 9th Street." (Id. ¶ 20.) "Due to leave taken by Plaintiff the terms of the demotion had to be amended twice resulting in Plaintiff's demotion lasting until September 2005." (Id. ¶ 21.)

It was later learned that "[i]n August 2004, Plaintiff [also] attempted to renew an existing permit for work at his personal residence without undergoing the proper procedure or paying the proper fees." (Id. ¶ 22.) "The request for renewal was submitted to the Chief Building Inspector, . . . Bixler . . . with a written note indicating that a manager in the Building Inspection Division had approved and signed off on the renewal." (Id. ¶ 23.) "Upon further investigation, Bixler discovered that the wrong type of permit was issued for the work done, and that Plaintiff's subordinate, John Richardson, issued this improper permit in July 2003." (Id. ¶ 24.) "The issue was reported to the Human Resources department for further

investigation." (Id. ¶ 25.) "The investigation confirmed the improper action and use of his position by Plaintiff." (Id. ¶ 26.)

"Plaintiff returned to his position as Supervising Building Inspector in September 2005" and was "provided a new duty statement which eliminated the managerial responsibilities that were previously part of the position prior to Plaintiff's demotion," but Plaintiff's position "maintained the same title, pay and benefits." (Id. ¶¶ 27-29.)

"In September 2005, Defendant Mosher started as Director of County Engineering." (Id. ¶ 30.) "After learning of Plaintiff's various transgressions and his employment history, Mosher determined that Plaintiff should be terminated from his position." (Id. ¶ 32.) Defendant Mosher made the decision to terminate Plaintiff." (Id. ¶ 46.) "Defendants Pedretti and Lude, who had been employed . . . .with the Building Inspection Division longer than Mosher, agreed that termination was the proper discipline." (Id. ¶ 33.) "Defendant Creson approved the decision to demote Plaintiff." (Id. ¶ 45.) Defendants Creson, Pedretti, Floyd, Bixler, and Hallimore did not "ha[ve] the authority, nor made the decision, to terminate Plaintiff." (Id. ¶ 47.)

"Human Resources prepared a Notice of Proposed Disciplinary Action for the dismissal of Plaintiff based upon the improper issuance and renewal of the permit for work on his residence in addition to his prior employment history." (Id. ¶ 34.) "Plaintiff was served with the Notice on November 15, 2005, and was immediately placed on administrative leave." (Id. ¶ 35.) "The Order for Disciplinary Action for dismissal was issued on January 9, 2006." (Id. ¶ 37.) "Plaintiff appealed the decision but then dismissed the appeal." (Id. ¶ 38.)

"Plaintiff claims that he was terminated as a consequence

for disclosing corruption to the Grand Jury." (Id. ¶ 39.) "However, [Defendants Pedretti, Mosher, Cochran, and Floyd] were not aware that Plaintiff filed a complaint with the Grand Jury or that he testified before the Grand Jury at the time that any employment decision or disciplinary action was taken." (Id. ¶ 40.) Further, Bixler and Hallimore declare they "have never been made aware of the specific content of any testimony by [Plaintiff] before the Grand Jury." (Id.; Ex. 14, 9, Ex. 15, 7.) Plaintiff counters that "Bixler was aware of the Grand Jury Testimony." (Pl's Response to SUF ¶ 40.) Plaintiff supports this assertion with a declaration from Bill McDowell ("McDowell"), a "supervising building inspector by Sacramento County from 1999 until 2006," who "worked as one of the commercial field supervisors with [Plaintiff] during that time and after [Plaintiff's] demotion." (McDowell ¶ 1.)

> McDowell declares that [p]rior to [his own] testimony before the Grand Jury, . . . Bixler asked [him] why [Plaintiff] complained to the Grand Jury. [McDowell] responded that [Plaintiff] had told [him] that he thought the managers were trying to cover up the Red Tag Scandal by silencing [Plaintiff]. Because of this question, it was apparent that . . . Bixler was already aware that [Plaintiff] had complained about this illegal activity to the Grand Jury.

(Id. ¶ 8)

Defendants object to paragraph 8 of McDowell's declaration on the grounds of relevancy, arguing that "[a]ny statements made by Mr. Bixler concerning Plaintiff's . . . the grand jury [testimony] is not relevant, as the undisputed facts establish that Bixler was not involved in the decision to terminate [Plaintiff.]" (Def's Obj. ¶ 2) Defendants' objection is overruled since Plaintiff has shown Bixler may have know of Plaintiff's testimony before the Grand Jury.

"Plaintiff admits that [he] did not inform any management employee with the County of Sacramento that he was intending to, or that he in fact did, testify before the Grand Jury prior to his termination." (Id. ¶ 41.) "Plaintiff admits that he did not tell any manager or supervisor, nor any defendant, that he was testifying before the grand jury." (Id. ¶ 50.) "Plaintiff further admits that he has no basis for his allegations that the content of his testimony before the Grand Jury was somehow told or leaked to any defendants" by Mary Ose from the Sacramento Bee; "Plaintiff's accusations that [Mary Ose] leaked information regarding his testimony to [Hobday] who then leaked it to [D]efendants is based purely on [Plaintiff's] experience and feeling without any actual evidence; he has no information to verify this belief." (Id. ¶¶ 42; 55.) "Plaintiff does not have any information that any named defendant knows what he testified to before the Grand Jury." (Id. ¶ 61.)

"In October 2005 . . . Mosher . . . testified before the Grand Jury as part of a presentation regarding the operations of Building Inspection Division as part of an investigation instigated by the Grand Jury" and "[a]t no time . . . bec[a]me aware that any employees were called to testify before the Grand Jury as witnesses." (Id. ¶¶ 43-44.) Further, "Plaintiff has no information that any Sacramento County employee who testified before the Grand Jury was terminated thereafter." (Id. ¶ 62.)

"Plaintiff's only basis for his claim that Cheryl Creson intimidated and coerced witnesses not to testify before the grand jury was that she was the director and was in charge." (Id. ¶ 59.) "Plaintiff admits that although he believes all the defendants were involved in the decision to demote him, he doesn't 'really have any

proof of that.'" (Id. ¶ 58.) Plaintiff's only basis for asserting that any of the defendants intimidated and coerced witnesses from testifying before the grand jury is by virtue of their positions in the County." (Id. ¶ 60.)

"At no time did [Defendants Creson, Pedretti, Floyd, Cochran, Bixler, [or] Hallimore] conspire with any County of Sacramento employee, or any other of the defendants, to demote or terminate Plaintiff." (Id. ¶ 48.) "Plaintiff's sole basis for believing the[re] was a conspiracy to have him terminated is an email from . . . Cochran instructing various management employees in the Municipal Services Agency not to respond to an email from Plaintiff, but to instead allow one individual to handle any response." (Id. ¶ 57.)

II. LEGAL STANDARDS

Summary judgment is appropriate if "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). Thus, the party moving for summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact for trial. Celotex Corp. v. Catrett, 477 U.S., 317, 323 (1986). If this burden is satisfied, "the non-moving party must set forth, by affidavit or as otherwise provided in Rule 56, specific facts showing that there is a genuine issue for trial." T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987) (quotations and citation omitted) (emphasis omitted). Summary judgment is properly granted "against a party who fails to make a showing sufficient to establish the existence of an element essential

to that party's case, and on which that party will bear the burden of proof at trial . . . since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Celotex, 477 U.S. at 322-23.

Defendants request that the Court take judicial notice of a complaint Plaintiff filed in the Superior Court of California against the County, Pedretti, and Does 1 through 50, on June 9, 2006, ("State Complaint"). Since Defendants have not shown how the State Complaint is relevant to this action, this request is denied. Defendants also request that judicial notice be taken of Plaintiff's request for dismissal of the State Complaint on November 9, 2007 ("Plaintiff's Request for Dismissal"). However, Defendants failed to attach the Plaintiffs' Request for Dismissal to their motion. Therefore, this request is also denied.

III. ANALYSIS

Defendants Creson, Pedretti, and Floyd seek summary judgment on Plaintiff's First Amendment claim arguing they did not make the "decision, nor had the authority, to terminate Plaintiff." (Mot. 8:23-9:8; Reply 3:8-14.) Further, the County seeks summary judgment on Plaintiff's First Amendment claim because arguing that Mosher, the County employee responsible for Plaintiff's termination, terminated Plaintiff for the "legitimate business reasons, [of] not the reporting . . . allegedly illegal activity." (Mot. 6:28-8:22; 11:17-20; Reply 4:24-8:3.)

For Plaintiff to establish a First Amendment retaliation claim, Plaintiff must show:

> (1) [he] spoke on a matter of public concern; (2) [he] spoke as a private citizen . . . ; (3) ***[his] protected speech was a substantial or motivating factor in the adverse employment action;***

> (4) . . . the state had an adequate justification for treating the employee differently from other members of the general public; and (5) . . . the state would have taken the adverse employment action even absent the protected speech.

Huppert v. City of Pittsburg, 574 F.3d 696, 702 (9th Cir. 2009)(citing Eng v. Cooley, 552 F.3d 1062, 1070 (9th Cir. 2009)).

Even assuming, *arguendo*, that Plaintiff's testimony before the Grand Jury satisfies the first two prongs of the above analysis for protected speech, Plaintiff has failed to controvert Defendants' evidence with specific facts showing that a genuine issue of material fact exists on the issue whether Plaintiff's "protected speech was a substantial or motivating factor in [his termination]." Id.

Defendants uncontroverted evidence shows that Defendants Creson, Pedretti, and Floyd did not "ma[k]e the decision, to terminate Plaintiff.'" (SUF ¶ 47). Further, "Plaintiff admits that although he believes all the defendants were involved in the decision to demote him, he doesn't 'really have any proof of that.'" (Id. ¶ 58.) Therefore, Defendants Creson, Pedretti, and Floyd's motion for summary judgment is granted on Plaintiff's First Amendment retaliation claim.

The County's exposure to liability on Plaintiff's First Amendment retaliation claim depends on whether Mosher made an unlawful decision to terminate Plaintiff. Plaintiff does not dispute that "[a]t the time [Mosher] issued the Proposed Order of Disciplinary Action for Dismissal on November 9, 2005, [Mosher] had no knowledge that [Plaintiff] filed a complaint with, or testified before, the Grand Jury." (Id. ¶ 40, Ex. 12, ¶ 13).

Moreover, Plaintiff admits "[he] did not inform any

management employee with the County of Sacramento," "supervisor, nor any defendant, that he was testifying before the [G]rand [J]ury." (Id. ¶¶ 41, 50.) "Plaintiff further admits that he has no basis for his allegations that the content of his testimony before the Grand Jury was somehow told or leaked to any defendants." (Id. ¶¶ 42; 55.) "Plaintiff does not have any information that any named defendant knows what he testified to before the Grand Jury," other than what he says about McDowell being aware of some issues. (Id. ¶ 61.) Plaintiff also concedes that his "only basis for asserting that any of the defendants intimidated and coerced witnesses from testifying before the grand jury is by virtue of their positions in the County." (Id. ¶ 60.) "Plaintiff admits that although he believes all the defendants were involved in the decision to demote him, he doesn't 'really have any proof of that.'" (Id. ¶ 58.)

Since Plaintiff has failed to introduce any evidence that his protected speech was a substantial motivating factor in any adverse employment action he allegedly experienced, Defendant County's motion for summary judgment is granted on Plaintiff's First Amendment retaliation claim. See Nelson v. Pima Community College, 83 F.3d 1075, 1080 (9th Cir. 1996) (affirming an order of a summary judgment for the defendant on a wrongful retaliation claim where the plaintiff submitted evidence that she had engaged in protected speech and that she was subsequently told not to come back to work but did not introduce any evidence of a link between the two events); Thomas v. Douglas, 877 F.2d 1428, 1433-34 (9th Cir. 1989) (affirming an order of a summary judgment for the defendant on a wrongful retaliation claim because the claimant failed to offer evidence that his protected

speech was a substantial motivating factor in his employer's refusal of his request for a transfer).

Further, Plaintiff's claim against Defendants Creson, Pedretti, Floyd, and the County for conspiracy to violate Plaintiff's civil rights and Plaintiff's claim against all Defendants for neglect to prevent violation of Plaintiff's civil rights fail, since Plaintiff's First Amendment retaliation claim upon which these claims depend, fails. Therefore, Defendants are also granted summary judgment on Plaintiff's second and third claims.

Defendants Creson, Pedretti, Floyd, and the County also seek summary judgment on Plaintiff's California Labor Code claim, arguing that Plaintiff cannot prove all the elements of this claim. (Mot. 18:18-20:15.) Plaintiff alleges that Defendants Creson, Pedretti, Floyd, and the County violated California Labor Code section 1102.5 ("Section 1102.5") by terminating Plaintiff in retaliation for "[P]laintiff's reporting of illegal and corrupt activities within the [County's] Municipal Services Agency." (Compl. ¶¶ 43-47.)

> To establish a prima facie case for retaliation under Section 1102.5, an employee must show (1) that he engaged in protected activity, (2) that he was thereafter subjected to an adverse employment action by his employer, and (3) ***that there was a causal link between the protected activity and the adverse employment action***.

Love v. Motion. Indus., 309 F.Supp. 2d 1128, 1134 (N.D. Cal. 2004)(emphasis added) (citing Morgan v. Regents of University of California, 88 Cal.App.4th 52, 69 (2000)). Since Plaintiff has failed to controvert Defendants' evidence showing that no causal link exists between Plaintiff's protected speech and Plaintiff's termination, Defendants Creson, Pedretti, Floyd, and the County's motion for

summary judgment on Plaintiff's California Labor Code claim is granted.

IV. CONCLUSION

For the stated reasons, Defendants' summary judgment motion is granted. Judgment shall be entered for Defendants, and this action shall be closed.

Dated: May 3, 2010

GARLAND E. BURRELL, JR.
United States District Judge

DECLARATION OF SERVICE BY CERTIFIED AND REGULAR MAIL

CASE NUMBER: 10-O-09103

I, the undersigned, am over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, 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 San Francisco, 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.: 7160 3901 9849 1845 8874** and in an additional sealed envelope as *regular mail*, at San Francisco, on the date shown below, addressed to:

Anthony J. Palik
Law Offices of Anthony J. Palik
1017 L Street, #384
Sacramento, CA 95814

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

N/A

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

DATED: November 21, 2011

Signed: _____
Mazie Yip
Declarant

The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST July 17, 2018
State Bar Court, State Bar of California,
Los Angeles

By _____
Clerk

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 April 9, 2019, I deposited a true copy of the following document(s):

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

in a sealed envelope for collection and mailing on that date as follows:

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

BEILAL M. CHATILA
CHATILA LAW, LLP
306 40TH ST STE C
OAKLAND, CA 94609 - 2609

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

LAURA HUGGINS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 9, 2019.

Mazie Yip
Court Specialist
State Bar Court