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<b>State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION</b>		
<b>Counsel For The State Bar</b>  <b>Laura Huggnis</b> <b>Deputy Trial Counsel</b> <b>180 Howard Street</b> <b>San Francisco, CA 94105</b> <b>(415) 538-2537</b>  Bar # 294148	<b>Case Number(s):</b> <b>16-O-11170-PEM</b> <b>16-O-17276</b> <b>17-O-03077 (inv)</b>   kwiktag® 226 163 393	<b>For Court use only</b>  <b>PUBLIC MATTER</b>  <b>FILED</b>  <b>OCT 06 2017</b>   STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<b>In Pro Per Respondent</b>  <b>Gregory Andrew Broiles</b> <b>900 E Hamilton Ave, Ste 100</b> <b>Campbell, CA 95008</b> <b>(408) 244-5754</b>  Bar # 229384	<b>Submitted to: Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter of:</b> <b>GREGORY ANDREW BROILES</b>  Bar # 229384  A Member of the State Bar of California (Respondent)		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **December 10, 2003**.
- (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 **17** 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. (Check one option only):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **Three billing cycles immediately following the effective date of the Supreme Court order in this matter.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.

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

- (1)  **Prior record of discipline**
- (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (2)  **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3)  **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4)  **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5)  **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6)  **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

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- (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 his or her misconduct.
- (10)  **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11)  **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See Attachment to Stipulation, at page 12.
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable. See
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see 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 his/her 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 his/her 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 him/her.
- (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 the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

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- (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 his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her 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 his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**No Prior Record of Discipline - See Attachment to Stipulation, at page 12.**  
**Pre-trial Stipulation - See Attachment to Stipulation, at page 12.**  
**Family Difficulties - See Attachment to Stipulation, at page 12.**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **one (1) year**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:
- (b)  The above-referenced suspension is stayed.
- (2)  **Probation:**
- Respondent must be placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3)  **Actual Suspension:**
- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of **sixty (60) days**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii.  and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and present learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
  - No Ethics School recommended. Reason: \_\_\_\_\_
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

- (10)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

**F. Other Conditions Negotiated by the Parties:**

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2)  **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5)  **Other Conditions: Mental Health Conditions - See Attachment to Stipulation, at pages 15-16.**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:

GREGORY ANDREW BROILES

CASE NUMBERS:

16-O-11170-PEM, 16-O-17276, and 17-O-03077 (inv)

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and Rules of Professional Conduct.

Case No. 16-O-11170-PEM (Complainant: John Davagian)

FACTS:

1. Gil Peel ("Mr. Peel") serves as Trustee of the Special Needs Trust for M.P. Lozinski ("M.P."). Mr. Peel's responsibilities include managing the financial affairs of M.P., who is disabled. M.P. is one of the beneficiaries of the Lozinski Family Trust (the "family trust"), which is a separate trust. Other beneficiaries of the family trust include John Lozinski and C. Lozinski ("family trustee").

2. In December of 2014, Mr. Peel and John Lozinski grew concerned that C. Lozinski was pilfering trust assets in violation of his fiduciary duties to the family trust and its beneficiaries. At the time, Mr. Peel and M.P. lived in Rhode Island. The principal place of administration of the family trust was believed to be within Palo Alto, California.

3. In his capacity as M.P.'s trustee, Mr. Peel began communicating with Gregory Broiles ("respondent") in December of 2014 with the intention of hiring respondent to unseat the family trustee and obtain an accounting of the family trust.

4. On December 9, 2014, respondent emailed Mr. Peel his contact information, including the address and telephone number of respondent's law firm – Legacy Planning Law Group.

5. On December 22, 2014, Mr. Peel sent respondent an email and asked respondent how the action against the family trustee was progressing.

6. On December 23, 2014, respondent sent Mr. Peel an email with the subject line, "draft petition." The only content in the email stated, "Please see attached." The attached document was an unsigned Ex Parte Petition to Suspend Trustee's Powers, dated December 24, 2014. The petition listed John Lozinski as the petitioner and stated that respondent was his attorney.

7. On December 31, 2014, Mr. Peel sent an email to respondent with the subject line, "Engagement payment for Lozinski." John Lozinski was courtesy copied on this email. Mr. Peel stated that he had spoken "with John yesterday and he asked me to send you a payment to start this action." The email indicated that Mr. Peel would send respondent \$2,000 to get the case moving, and asked respondent to provide an address and engagement letter.

8. In January 2015, Mr. Peel hired respondent to provide legal services related to the Lozinski family trust. On January 12, 2015, respondent deposited a check in the amount of \$2,000 into his general business account. The check was drawn from M.P.'s Special Needs Trust account, and was issued by Mr. Peel on January 6, 2015. The back of the check was endorsed, "For Deposit Only, Bank of the West, Acct. No. XXXXX9831, Law Ofc. Gregory A. Broiles PC DBA Legacy Planning Law Group."

9. On January 13, 2015, Mr. Peel sent an email to respondent asking for a status update on how the case was progressing. Mr. Peel informed respondent that he believed the trustee had already devalued the trust by approximately \$191,416. John Lozinski was courtesy copied on the email. Respondent received the email, but did not reply.

10. On January 27, 2015, Mr. Peel signed a retainer agreement stating that Mr. Peel and Legacy Planning Law Group were entering into an agreement in which respondent would petition Santa Clara County Superior Court to suspend powers of the trustee. The agreement indicated that Legacy Planning Law Group had already received an initial payment of \$2,000. The agreement also set forth the attorney's fee calculation of \$360 per hour for attorney time and \$180 per hour for paralegal time. Respondent promised to complete the petition on or before January 27, 2015. Respondent's signature is not on this document.

11. On June 27, 2015, Mr. Peel sent an email to respondent informing him that his services were being terminated. Mr. Peel expressed his dissatisfaction with respondent's representation stating, "I was led to believe this would take 3 to 4 weeks. It's now more than five months down the road and I have nothing to show . . . I called last Friday to make an appointment but you never called me at the appointment time. I called your office again. Your assistant called back and said you'd let me know when you got a court date. You never called me back." Mr. Peel asked for a statement of services rendered, a return of any unearned attorney's fees, and a copy of any motions that were filed on his behalf. Respondent received the email, but did not reply.

12. Between December 2014 and June 27, 2015, respondent failed to file the petition to remove C. Lozinski as family trustee.

13. Mr. Peel subsequently retained attorney John Davagian ("Mr. Davagian") to handle the family trust dispute. On December 7, 2015, Mr. Davagian sent respondent a letter introducing himself as Mr. Peel's new counsel. The letter notified respondent that Mr. Peel had not received the materials he requested on June 27, 2015. Mr. Davagian informed respondent that he would consider filing a complaint with the State Bar of California if respondent failed to respond within ten days. Mr. Davagian sent the letter via certified mail and kept the return card; the letter was delivered to respondent's office on December 10, 2015.

14. On February 4, 2016, the State Bar sent a letter to respondent informing him that a complaint had been filed by Mr. Davagian and Mr. Peel. The letter summarized the allegations, requested respondent's response, and advised respondent that he had a duty to cooperate with the State Bar's investigation. Respondent received the letter, but never responded.

15. On March 17, 2016, the State Bar sent a second letter to respondent. This letter also provided respondent with a thorough description of the alleged misconduct and requested that respondent contact the State Bar regarding the allegations. Additionally, respondent was asked to



address and provide documents in response to seventeen specific questions. Respondent received the letter, but never responded.

16. On January 26, 2017, the State Bar filed a Notice of Motion and Motion for Entry of Default in case number 16-O-11170-PEM.

17. On February 13, 2017, the Honorable Patrice E. McElroy (“Judge McElroy”) issued an order entering respondent’s default in case number 16-O-11170-PEM, and an order enrolling respondent as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6007(e). The order enrolling respondent on inactive status became effective on February 16, 2017.

18. Between February 16, 2017, and August 2, 2017, respondent was ordered inactive by the State Bar Court because of his default in case number 16-O-11170-PEM.

19. On July 28, 2017, respondent filed a Notice of Motion and Motion for Relief from Default as well as a “Proposed Answer” to the Notice of Disciplinary Charges in case number 16-O-11170-PEM.

20. On August 2, 2017, in case number 16-O-11170-PEM, Judge McElroy granted respondent’s Motion for Relief from Default and issued an order terminating respondent’s inactive enrollment. Respondent’s Motion for Relief from Default cited health and family difficulties as factors that contributed to his failure to timely respond and participate in this case.

21. On September 1, 2017, respondent mailed an accounting of work performed and two postal money orders in the total amount of \$2,000 to Mr. Davagian. The postal money orders were paid to the order of Mr. Peel, and represent a total refund of Mr. Peel’s retainer in the Lozinski matter. On September 5, 2017, Mr. Davagian acknowledged receipt of the two postal money orders.

#### CONCLUSIONS OF LAW:

22. By failing to perform agreed upon legal services in a matter where respondent was employed by a client, namely failing to file a petition to suspend the powers of the trustee for the Lozinski Family Trust, between December 2014, and June 2015, on behalf of respondent’s client, Gil Peel, in the Santa Clara County Superior Court, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

23. By failing to promptly return advanced fees that respondent received on January 6, 2015, in the amount of \$2,000, to respondent’s client, Gil Peel, upon the termination of respondent’s employment on June 27, 2015, where respondent was hired to prepare and file a petition in the Santa Clara Superior Court to suspend the powers of the trustee for the Lozinski Family Trust, but never filed such document, and thus did not earn the advanced fee, respondent failed to refund promptly, upon respondent’s termination of employment, any of the \$2,000 fee to the client, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

24. By failing to promptly render an accounting to respondent’s client, Gil Peel, of legal services performed in connection with the \$2,000 advanced fee, after the termination of respondent’s employment on June 27, 2015, and upon the client’s requests for such accounting on the dates of June 27, 2015, and December 7, 2015, respondent failed to render an appropriate accounting to the client regarding those funds, in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

25. By failing to provide a substantive response to the State Bar's letters dated, February 4, 2016, March 17, 2016, and May 24, 2016, that respondent received, which requested respondent's response to the allegations of misconduct being investigated in case number 16-O-111 70, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of Business and Professions Code section 6068(i).

Case No. 16-O-17276 (Complainant: Alice Leung)

FACTS:

26. In July of 2015, Alice Leung ("Mrs. Leung") hired respondent to update her trust and execute grant deeds conveying Mrs. Leung's real property, located in Sacramento, California (the "Sacramento property"), to her children.

27. On August 25, 2016, Mrs. Leung met with respondent to discuss returning ownership of the Sacramento property back to Mrs. Leung. Respondent asked Mrs. Leung to get an agreement from her children and to get an appraisal of the property.

28. After Mrs. Leung obtained the agreement and received an appraisal, Mrs. Leung arranged an appointment with respondent on September 2, 2016, at his law office, the Legacy Planning Law Group, located at 1299 Del Mar Avenue in San Jose, California (the "San Jose office").

29. On September 2, 2016, Mrs. Leung went to respondent's San Jose office and was informed that respondent moved his practice to 900 Hamilton Avenue in Campbell, California (the "Campbell office"), and that respondent would meet her at this new location. When Mrs. Leung met with respondent, he stated that he could draft deeds to effect a transfer of ownership of the Sacramento property back to Mrs. Leung for a total of \$600. Respondent requested \$300 up front. On that same date, Mrs. Leung made a credit card payment to Legacy Planning Law Group in the amount of \$300 and received a digital receipt of this transaction.

30. Since September 2, 2016, Mrs. Leung has not heard from respondent regarding the Sacramento property. During September 2016, Mrs. Leung called respondent on a weekly basis and left voice messages asking for status updates. Between September 9, 2016, and October 20, 2016, Mrs. Leung also sent four emails to respondent's email address (info@lplawgroup.com), which respondent received. Three of the emails requested status updates, and the fourth email terminated respondent's employment and demanded a return of the \$300 advanced fee. Respondent never replied to any of Mrs. Leung's emails.

31. On September 22, 2016, respondent prepared and mailed the requested draft deeds to Mrs. Leung's children, but failed to inform Mrs. Leung that he performed this legal service.

32. On October 13, 2016, Mrs. Leung visited respondent's San Jose office, and found an eviction notice on the door stating that respondent owed the landlord over \$20,000 in back rent. On that same date, Mrs. Leung travelled to respondent's Campbell office, and gave the receptionist a letter demanding a refund.

33. In October 2016, respondent vacated his San Jose law office and moved his practice to Campbell, but failed to update his membership record.

34. On February 1, 2017, the State Bar sent a letter to respondent informing him that a complaint had been filed by Mrs. Leung. The letter summarized the allegations, requested respondent's response, and advised respondent that he had a duty to cooperate with the State Bar's investigation. Respondent received the letter – which was sent to the address respondent maintained on his official State Bar membership record – but never responded.

35. On February 15, 2017, the State Bar sent respondent letters to both of respondent's addresses in San Jose and Campbell. The letters advised respondent that the State Bar had not received a written response to its previous letter, dated February 1, 2017, and cautioned that failure to participate in a State Bar investigation may result in a violation of Business and Professions Code section 6068(i). Neither of the State Bar's letters of February 15, 2017 were returned as undeliverable. Although respondent received the State Bar's letters, he never responded.

36. On March 23, 2017, approximately five months after relocating, respondent updated his membership record and listed the Campbell office as his new address.

37. In July 2017, respondent returned the unearned advanced fee to Mrs. Leung, in the full amount of \$300.

#### CONCLUSIONS OF LAW:

38. By failing to respond to four telephonic, four written, and two in-person reasonable status inquiries made by respondent's client, Alice Leung, between September 9, 2016, and October 20, 2016, that respondent received in a matter in which respondent agreed to provide legal services, respondent failed to respond promptly to reasonable status inquiries of a client, in willful violation of Business and Professions Code section 6068(m).

39. By failing to provide a substantive response to the State Bar's letters dated February 1, 2017, and February 15, 2017, that respondent received, which requested respondent's response to the allegations of misconduct being investigated in case number 16-O-17276, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of Business and Professions Code section 6068(i).

40. By vacating, in October 2016, the law office located at 1299 Del Mar Avenue, Suite 100, in San Jose, California – the address that respondent maintained on the official membership records of the State Bar – and by waiting until March 23, 2017, to update his official membership records address, respondent failed to comply with the requirements of Business and Professions Code section 6002.1, by failing to notify the State Bar of the change in respondent's address within 30 days, in willful violation of Business and Professions Code section 6068(j).

Case No. 17-O-03077 (inv) (Complainant: Sarah Sherfy)

#### FACTS:

41. On February 13, 2017, in case number 16-O-11170-PEM, Judge McElroy issued an order entering respondent's default in that matter, and an order enrolling respondent as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6007(e). On that date, the order was served on respondent at respondent's official State Bar membership records address.

However, it is unclear when respondent received actual notice of the suspension because respondent vacated his official membership record's address in October 2016.

42. The order enrolling respondent on inactive status became effective on February 16, 2017.

43. On March 15, 2017, Sarah Sherfy hired respondent to "update/modify" her family trust, when respondent should have known that he was not entitled to practice law.

44. Between February 16, 2017, and August 2, 2017, respondent was ordered inactive by the State Bar Court because of his default in case number 16-O-11170-PEM. On August 2, 2017, Judge McElroy granted respondent's Motion for Relief from Default and issued an order terminating respondent's inactive enrollment.

#### CONCLUSIONS OF LAW:

45. By agreeing to update/modify Sarah Sherfy's family trust on March 15, 2017, respondent held himself out as entitled to practice law when respondent was not an active member of the State Bar, in violation of Business and Professions Code sections 6125 and 6126, and thereby willfully violated Business and Professions Code section 6068(a).

#### AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent committed multiple acts of wrongdoing by failing to perform in two client matters, failing to return unearned fees, failing to communicate with two clients, failing to return a client file, failing to participate in two State Bar investigations, and failing to update the address on his official State Bar membership record.

#### MITIGATING CIRCUMSTANCES.

**No Prior Discipline:** At the time of the alleged misconduct, respondent had practiced law for over 10 years without a prior record of discipline. (See *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [practicing for over 10 years without prior discipline is worth significant weight ].)

**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 mitigating 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].)

**Family Difficulties:** In June 2011 – prior to respondent's misconduct – respondent and his then-wife lost their home in the Bay Area to foreclosure. They relocated to Chico, California, where they purchased a new home. Between 2011 and 2015, respondent commuted between Chico and his practice in San Jose. During the week, respondent worked and resided in San Jose. Respondent spent weekends in Chico. The combination of financial distress and separation led to irreconcilable differences in respondent's marriage. In June 2015, respondent filed for divorce. In addition to the emotional/marital difficulties respondent experienced between 2011 and 2015, respondent also suffered from depression and anxiety. The breakdown of respondent's marriage, coupled with his depression and anxiety, resulted in the onset of panic attacks in August 2016. In January 2017, respondent was diagnosed with a

thyroid disorder that can also cause extreme anxiety and panic attacks. Respondent currently receives weekly psychotherapy with a marriage and family therapist (“MFT”) and participates in a weekly therapy group addressing psychological adjustment issues. Since August 2016, respondent has been taking prescribed medication for his anxiety and depression. (See *In the Matter of Deireling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, 560-561 [despite the absence of complete rehabilitation, mitigation for emotional difficulties was afforded to attorney who demonstrated steady progress towards rehabilitation].)

#### **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 admits to committing eight acts of professional misconduct. 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). Under standard 2.12(a), disbarment or actual suspension is the presumed sanction where an attorney violates his or her duty to support the Constitution and laws of California and the United States.

Because the majority of respondent’s misconduct involved performance and communication violations, standard 2.7(c) is also relevant, and provides that suspension or reproof is the presumed sanction for performance, communication, and withdrawal violations that are limited in scope or time. Under this

standard, the degree of sanction depends on the extent of the misconduct and the degree of harm to the clients.

In the present matter, application of the standards – including the presumed sanctions set forth in standards 2.12(a) and 2.7(c) – weighs in favor of a 60-day actual suspension. Respondent's misconduct warrants actual suspension because, in addition to holding himself out as entitled to practice law when he was on inactive status, respondent committed misconduct in two other client matters by failing to perform and failing to communicate.

In the *Leung* and *Davagian* matters, respondent belatedly made his clients whole when he returned the unearned fees months after his legal services were terminated. However, respondent's delay in returning the funds of Mrs. Leung and Mr. Peel, negates any mitigation respondent would otherwise receive for his efforts to repay his clients.

The mitigating and aggravating factors do not support a deviation from the presumed sanction of actual suspension. Respondent should receive mitigation for his 10 years in practice without prior discipline and his willingness to resolve the present matters through a pre-trial stipulation. Respondent's misconduct is also somewhat mitigated by the family difficulties and health issues that he experienced prior to and during the period of misconduct. In aggravation, respondent violated provisions of both the Business and Professions Code and the Rules of Professional conduct, amounting to a total of eight stipulated culpability findings that ranged from failing to participate in State Bar investigations to performance and communication violations. On balance, the factors in mitigation outweigh respondent's sole factor in aggravation, but not to the extent that a downward departure from standard 2.12(a) is warranted.

Case law also supports a 60-day actual suspension. In *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585 ("*Johnston*") the court imposed a 60-day actual suspension where the attorney held himself out as entitled to practice law while suspended for non-payment of membership fees, among other misconduct. There, the attorney was hired to represent a client in a personal injury matter. Approximately one year into the representation, the attorney filed a civil complaint on behalf of his client but did not perform any additional work thereafter. Five years later, the attorney still had not taken any steps to further the client's case and stopped returning the client's calls. Eight years after the client first hired the attorney, and well after the attorney ceased communication, the client drove to the attorney's home for an in-person meeting. During this meeting, the attorney did not tell the client that he was suspended from the practice of law, and instead lied to her about the status of her case. The attorney stated that he was waiting for trial dates and expected a settlement soon when, in fact, the client's case was time-barred. The court considered the attorney's 12 years without prior discipline to be an "important" mitigating factor. In aggravation, the attorney's actions caused significant harm to the client and, in further aggravation, the attorney failed to file a response to the notice of disciplinary charges.

In accordance with *Johnston*, respondent's misconduct warrants a low-end actual suspension. Similar to *Johnston*, respondent held himself out as entitled to practice law while on inactive status in a single instance, and also committed performance and communication violations. In contrast to *Johnston*, respondent did not engage in acts of dishonesty and is entitled to additional mitigation for entering into the present pre-trial stipulation. However, respondent's misconduct encompassed three separate client matters and was therefore broader in scope. While the misconduct addressed in *Johnston* was arguably more serious due to the attorney's dishonesty, the scope of respondent's misconduct raises its own public protection concerns and weighs in favor of imposing a similar level of discipline.

Authority for imposing a 60-day actual suspension in the present matter can also be found in case law where the misconduct at issue was predominated by communication and performance violations. (See *King v. State Bar* (1990) 53 Cal.3d 307 [imposition of a 3-month actual suspension where the attorney failed to perform, failed to return client files, and failed to pay restitution in two client matters, and where the attorney's misconduct was mitigated, in part, by the attorney's divorce and subsequent depression].)

In conclusion, respondent's misconduct warrants an actual suspension for a period of 60 days because this is a level of discipline that is consistent with the standards and case law, and also promotes the primary purposes of discipline, i.e., 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.

**DISMISSALS.**

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

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
16-O-11170	Two	Business and Professions Code section 6068(m)
16-O-11170	Seven	Business and Professions Code section 6068(j)
16-O-17276	One	Rules of Professional Conduct, rule 3-110(A)
16-O-17276	Two	Rules of Professional Conduct, rule 3-700(D)(2)

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of September 5, 2017, the discipline costs in this matter are \$9,956. 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.

**MENTAL HEALTH CONDITIONS.**

Respondent, at respondent's expense, shall obtain psychiatric or psychological treatment from a duly licensed psychiatrist, clinical psychologist or clinical social worker, no less than two (2) times per month. Respondent shall commence treatment within forty five (45) days of the execution date of this agreement. Respondent shall furnish to the Office of Probation Unit, State Bar of California, at the time quarterly reports are required to be filed by the respondent with the Office of Probation, a written statement from the treating psychiatrist, clinical psychologist or clinical social worker, that respondent is complying with this condition.

Upon a determination by the treating psychiatrist, clinical psychologist or clinical social worker that respondent is no longer in need of treatment two (2) times per month, respondent shall provide, to the Office of Probation, State Bar of California, a written statement from the treating psychiatrist, clinical psychologist or clinical social worker verifying the change in number of treatment sessions per month. Upon acceptance by the Office of Probation, State Bar of California, the reduction in treatment will be permitted.

Respondent shall execute and provide the Office of Probation, State Bar of California, upon its request, with any medical waivers which shall provide access to respondent's medical records relevant to verifying respondent's compliance with this condition of probation; failure to provide and/or revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation, State Bar of California, under this paragraph, shall be confidential and shall not be disclosed except to personnel of the Office of Probation, State Bar of California, and the State Bar Court, who are involved in maintaining and/or enforcing the terms and conditions of this agreement.

**EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT.**

Respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course to be ordered as a condition of probation. (See Rules Proc. of State Bar, rule 3201.)



(Do not write above this line.)

In the Matter of: <b>GREGORY ANDREW BROILES</b>	Case number(s): <b>16-O-11170-PEM, 16-O-17276, 17-O-03077 (inv)</b>
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**SIGNATURE OF THE PARTIES**

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

9/28/2017  
Date

  
Respondent's Signature

Gregory Andrew Broiles  
Print Name

N/A  
Date

N/A  
Respondent's Counsel Signature

N/A  
Print Name

9/28/17  
Date

  
Deputy Trial Counsel's Signature

Laura Huggins  
Print Name

(Do not write above this line.)

In the Matter of: <b>GREGORY ANDREW BROILES</b>	Case Number(s): 16-O-11170-PEM; 16-O-17276-PEM; 17-O-03077-PEM (inv)
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### ACTUAL SUSPENSION ORDER

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

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

1. On page 15 of the stipulation, in the first paragraph under "Mental Health Conditions," "Respondent shall commence treatment within forty five (45) days of the execution date of this agreement" is deleted, and in its place is inserted "Treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter."

2. On page 15 of the stipulation, the final paragraph is deleted in its entirety, and in its place is inserted "If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or the Office of Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 5.300 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification."

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 rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

*Oct. 6, 2017*

Date



**LUCY ARMENDARIZ**  
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 October 6, 2017, I deposited a true copy of the following document(s):

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

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

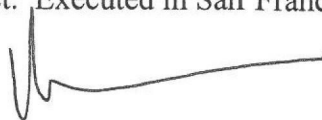
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

GREGORY A. BROILES  
LEGACY PLANNING LAW GROUP  
900 E HAMILTON AVE STE 100  
CAMPBELL, CA 95008 - 0668

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

Laura A. Huggins, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 6, 2017.



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Vincent Au  
Case Administrator  
State Bar Court