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State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

ORIGINAL

<p>Counsel For The State Bar</p> <p>Drew Massey Supervising Attorney 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1204</p> <p>Bar # 244350</p>	<p>Case Number(s): 16-O-17719 17-O-01558</p> <p>kwiktag® 226 154 740</p> 	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED 10 DEC 15 2017</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Susan Margolis 2000 Riverside Drive Los Angeles, CA 90039 (323) 953-8996</p> <p>Bar # 104629</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: DAVID GREGORY GRAZIANI</p> <p>Bar # 276009</p> <p>A Member of the State Bar of California (Respondent)</p>		

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 **May 18, 2011**.
- (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 **18** 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".

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- (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 following the effective date of discipline.** (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. See page 15.
- (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 page 15.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution. See page 15.
- (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 [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:

Prefiling stipulation. See page 15.

No Prior record of Discipline, see page 15.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **two (2) years**.
- 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 **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:

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.

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(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 checked="" 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: Respondent is required to pay restitution and make payments as described in the Financial Conditions on page 7. Should respondent pay some portion of restitution after the signing of this stipulation, but before the Supreme Court disciplinary order becomes effective, any payments will be credited against the amounts owed by respondent.**

If respondent takes and passes the MPRE subsequent to the State Bar Court's order approving this stipulation, but prior to the imposition of discipline, and provides proof of such passage to the Office of Probation, such will satisfy the condition in paragraph F.(1) above.

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In the Matter of: DAVID GREGORY GRAZIANI	Case Number(s): 16-O-17719 17-O-01558
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Mark Rollings	\$20,000.30	September 19, 2016

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **120 days prior to the expiration of probation.**

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reproval), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
Mark Rollings	\$200	1 st of each month

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- 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.

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";
 - b. Respondent has kept and maintained the following:
 - i. A written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and,
 - 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
 - c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
 - i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

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d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAVID GREGORY GRAZIANI

CASE NUMBERS: 16-O-17719, 17-O-01558

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/or Rules of Professional Conduct.

Case No. 16-O-17719 (Complainant: Vadim Levotman)

FACTS:

1. On March 23, 2015, Vadim Levotman ("Levotman") hired respondent to represent him in connection with obtaining a mortgage loan modification with his mortgage lender, Wells Fargo Bank.
2. On March 23, 2015, a retainer agreement was signed by Levotman and respondent which stated, "Client hires the Firm to prepare and submit a first-lien loan modification application to Wells Fargo and any possible litigation that might arise from this submission."
3. The retainer did not include the language required by Civil Code section 2944.6, nor did respondent provide that information in a separate writing.
4. Pursuant to the retainer, Levotman paid \$3,000 to respondent in two installments. The first, for \$1,500 was paid on March 23, 2015 and the second on May 12, 2015. At the time of the payments, respondent had not completed the loan modification services he had agreed to perform.
5. Subsequent to retention, respondent and Levotman communicated by email on numerous occasions. Each communication specifically referenced the loan modification work and respondent's promise to complete such work.
6. On September 24, 2015, Levotman emailed respondent that his "patience had run out." He requested a return of his retainer fee and informed respondent that he would be hiring other counsel.
7. On October 6, 2015, respondent replied and promised to send Levotman his entire case file including a draft of the loan modification application and final invoice.
8. On November 14, 2016, Levotman filed his complaint with the State Bar.
9. On January 19, 2017, a State Bar investigator sent a letter to respondent requesting his response to the allegations in Levotman's complaint.
10. In his written response to the State Bar dated March 10, 2017, respondent stated that he was never hired to perform loan modification. Instead, he stated he was hired to exhaust "prelitigation

remedies” before filing suit against the lender. This statement was not true. At the time respondent made the statement, he knew it was untrue.

11. With his March 10, 2017 reply, respondent also provided documents including a “Tasks Amendment” describing the tasks to be performed, all of which related to litigation, a “change of services” letter, and an April 2, 2015 email correcting the retainer agreement.

12. Respondent’s reply also included invoices and billing statements, dated May 2, 2015, August 1, 2015, and October 1, 2015, which detailed various actions including drafting a demand letter and preparing a verified complaint.

13. The “Tasks Amendment,” “change of services” letter, April 2, 2015 email, billing statements, draft demand letter, and draft complaint were not genuine. Respondent knew that the documents were not genuine when he provided them to the State Bar.

14. On February 17, 2017, respondent copied the State Bar investigator on an email he sent to Levotman. In that email, respondent promised to pay Levotman \$3,300 in exchange for a signed settlement agreement, and specifically stated that the settlement agreement, “DOES NOT settle any claims or grievances that you [Levotman] may have alleged in your original bar complaint against me and my firm that you submitted to the State Bar of California in November 2016. ... Please note, lawyers are not permitted to settle ethical claims in exchange for consideration, even if the lawyer and the client have settled, or are in the process of settling their fee dispute claims (like in this case).”

15. On March 23, 2017, Levotman provided the State Bar with a copy of the settlement agreement that respondent asked him to sign. A provision in the settlement agreement required Levotman to withdraw his State Bar claim and communicate the withdrawal to the State Bar investigator within one day of execution.

16. On August 23, 2017, respondent refunded \$3,000 to Levotman.

CONCLUSIONS OF LAW:

17. By failing to prepare or submit any loan modification application from March 22, 2015 until his termination on or about September 24, 2015, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

18. By failing to provide Levotman with the advisory specified by Civil Code section 2944.6 in writing, respondent willfully violated Business and Professions Code, section 6106.3.

19. By charging and collecting \$3,000 from Levotman to perform loan modification services before respondent had fully performed each and every service he had contracted to perform, respondent willfully violated former Business and Professions Code, section 6106.3.

20. By stating in writing to the State Bar investigator that respondent was not hired to perform loan modification work, and by providing documents to the State Bar which he stated were genuine, which were not genuine, when respondent knew such statements to be false, respondent committed an act of moral turpitude and thereby willfully violated Business and Professions Code, section 6106.

21. By seeking agreement from Levotman to withdraw his disciplinary complaint against respondent, and not cooperate in the State Bar investigation, respondent willfully violated Business and Professions Code, section 6090.5(a)(2).

Case No. 17-O-01558 (Complainant: Mark Rollings)

FACTS:

22. On April 3, 2014, Mark Rollings wrote to respondent and requested that respondent obtain a loan modification on his behalf. Thereafter, further discussion was held by email and respondent agreed to perform loan modification work.

23. On April 14, 2014, Rollings paid respondent \$3,500 for the mortgage loan modification work.

24. On May 25, 2014, respondent submitted the mortgage loan modification application to Rollings' mortgage lender, Select Portfolio Services, Inc. ("SPS").

25. On May 29, 2014, Rollings signed respondent's retainer agreement which stated in part that respondent would, "perform prelitigation services and submit a completed loan modification application to Client's servicer ..."

26. The retainer did not include the language required by Civil Code section 2944.6, nor did respondent provide that information in a separate writing.

27. On January 2, 2015, SPS sent a letter to Rollings in which it rejected the request for a loan modification.

28. On January 30, 2015, respondent appealed SPS's decision to deny the loan modification.

29. On February 3, 2015, Rollings paid respondent an additional \$5,000 to initiate litigation against SPS pursuant to the retainer agreement.

30. On December 4, 2015, respondent filed a lawsuit against Rollings' mortgage lender in Los Angeles Superior Court, captioned *Mark Rollings v. Select Portfolio Servicing, Inc. et. al.*, case number BC603234 which included causes of action for unfair business practices and violations of the Homeowner's Bill of Rights. Respondent also recorded a Lis Pendens on the property.

31. Between January 26, 2016 and September 19, 2016, Rollings paid respondent an additional \$20,190.54 in furtherance of the litigation against SPS.

32. On May 6, 2016, the opposing party in the lawsuit served discovery requests on respondent including form interrogatories, special interrogatories, requests for production of documents, and requests for admissions. Respondent did not provide these documents to Rollings or notify him of the discovery.

33. Responses to the discovery requests were due no later than June 10, 2016. Respondent did not provide responses to the discovery requests.

34. On June 16, 2016, the opposing counsel sent a “meet and confer” letter to respondent requesting responses to the discovery requests. Respondent did not reply to the letter.

35. On July 1, 2016, the opposing counsel filed a motion to compel responses to the discovery requests. Respondent did not file any opposition to this motion.

36. On September 13, 2016, the court granted the motion to compel and also sanctioned Rollings \$960. Respondent did not inform Rollings that the court sanctioned him for failing to provide discovery, instead respondent paid the sanction.

37. On September 23, 2016, the opposing counsel filed a Motion for Summary Judgment. Respondent filed an opposition.

38. On October 1, 2016, respondent provided responses to the discovery requests. None of the responses were accompanied by a verification. Respondent did not substantively answer any requested item but instead replied with form objections.

39. On December 7, 2016, judgment was entered on behalf of SPS.

40. Rollings terminated respondent on February 21, 2017.

41. Respondent did not inform Rollings that he failed to respond to the discovery requests or the motion to compel. Rollings learned of these events only after he terminated respondent.

42. Between July 1, 2016 and August 25, 2016, respondent was placed on administrative inactive status for failure to comply with Minimum Continuing Legal Education requirements. Nevertheless, respondent performed and billed Rollings for legal work on July 1, 14, and 15, 2016. Respondent also did not inform Rollings that he was administratively inactive.

43. Respondent also billed and charged Rollings for court appearances that he did not attend. Specifically, respondent billed 2.8 hours for a July 14, 2016 appearance at an ex parte hearing he did not attend, but was attended by appearance counsel; 3.2 hours for a September 26, 2016 appearance at an Alternative Dispute Resolution (“ADR”) review hearing he did not attend; and 3.4 hours for an October 13, 2016 appearance at an Order to Show Cause hearing regarding his failure to attend the ADR review hearing, which respondent also did not attend. At the time respondent billed Rollings for these amounts, respondent was aware that he had not appeared at the subject hearings.

44. On April 4, 2017, a State Bar investigator wrote to respondent regarding the allegations made by Rollings.

45. On June 9, 2017, respondent replied by letter through counsel. The response included several documents that were not genuine, including a letter dated June 1, 2014, which purported to clarify the retainer agreement and stated that the fees were for litigation, not for loan modification work. This document was never actually sent to Rollings.

46. The June 9, 2017 response also included two “litigation update” letters. One purported to provide Rollings with the discovery requests. The other described the result of a July 15, 2016 ex parte hearing.

47. None of the forgoing documents provided to the State Bar were genuine and, at the time respondent provided them to the State Bar, respondent knew that such documents were not genuine.

48. On November 2, 2017, respondent refunded \$8,690.24 of the \$28,690.54 in fees he collected from Rollings.

CONCLUSIONS OF LAW:

49. Respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A) by:

- a. failing to provide the client with discovery requests served by opposing counsel;
- b. failing to timely respond to discovery requests served by opposing counsel;
- c. failing to respond to a June 16, 2016 “meet and confer” letter sent by opposing counsel;
- d. failing to file any response to the July 1, 2016 Motion to Compel discovery responses filed by opposing counsel;
- e. failing to attend a September 26, 2016 ADR review hearing; and
- f. failing to attend an October 13, 2016 Order to Show Cause hearing regarding respondent’s failure to attend the ADR review hearing.

50. By failing to provide Rollings with the advisory specified by Civil Code section 2944.6 in writing, respondent willfully violated Business and Professions Code, section 6106.3.

51. By charging and collecting \$28,690.54 from Rollings to perform loan modification services and other forms of mortgage loan forbearance (including litigation against Rollings’ lender) before respondent had fully performed each and every service he had contracted to perform, respondent willfully violated former Business and Professions Code, section 6106.3.

52. Respondent willfully violated Business and Professions Code, section 6068(m) by failing to inform his client of significant developments within his case, including:

- a. that respondent was ineligible to practice law from July 1, 2016 through August 25, 2016;
- b. that on or about May 6, 2016, the opposing counsel had served discovery requests in the Los Angeles County Superior Court civil action entitled *Rollings v. Select Portfolio Services, Inc.*, case number BC603234;
- c. that respondent failed to respond to the discovery requests in the civil action until compelled to do so;
- d. that on July 1, 2016, the opposing counsel filed a motion to compel responses in the civil action;
- e. that on September 13, 2016, the court in the civil action sanctioned the client in the amount of \$960; and
- f. that on September 23, 2016, the opposing counsel in the civil action filed a Motion for Summary Judgment.

53. By billing his client for court appearances that respondent did not attend, respondent committed an act of moral turpitude and thereby willfully violated Business and Professions Code, section 6106.

54. By stating in writing to the State Bar that he had provided a letter to his client revising the retainer agreement, and that he had sent two “litigation update” letters to his client when he had not done so, and by providing those documents to the State Bar and claiming that they were genuine, when they

were not in fact genuine, respondent committed an act of moral turpitude and thereby willfully violated Business and Professions Code, section 6106.

55. By practicing law between July 1, 2016 and August 25, 2016 when to do so was in violation of Business and Professions Code sections 6125 and 6126, respondent failed to uphold the laws 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 misconduct in two client matters including failing to perform with competence, collecting illegal fees, engaging in the unauthorized practice of law, failing to inform the client of significant developments, and misrepresenting facts to his clients and the State Bar. Multiple acts of wrongdoing are an aggravating factor. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168 [finding multiple acts of misconduct aggravating].)

Significant Harm to Client, Public or Administration of Justice (Std. 1.5(j)). Respondent's actions have significantly harmed his clients. Respondent took \$3,000 in illegal fees from one client and \$28,690.54 from another. (*In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 235.)

Failure to Make Restitution (Std. 1.5(m)). Respondent took significant illegal fees from Rollings and has failed to make complete restitution. The failure to pay restitution is an aggravating factor. (*In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437, 445 [failure to pay restitution warrants weight in aggravation].)

MITIGATING CIRCUMSTANCES.

Prefiling 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].)

No Prior record of Discipline: Respondent has been admitted to practice law in California since May 2011 and practiced without a prior record of discipline for approximately three years. In addition, respondent was admitted to practice law in the State of New York in December 2002 and has no record of discipline in that jurisdiction. Respondent's lack of prior discipline is a mitigating factor. (*In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80, 88.)

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 Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 1.7(a) states that where two or more standards apply to a member’s misconduct, the most severe should be used. Here, that is standard 2.11 which presumes disbarment or actual suspension for an act of moral turpitude. The degree of sanction “depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim...; and the extent to which the misconduct related to the member’s practice of law.” Here, the magnitude is great as respondent not only misled clients in two separate matters, but also actively and fraudulently attempted to mislead the State Bar. The misconduct harmed his clients as they were charged illegal fees while in a vulnerable financial situation. And the misconduct permeated the attorney/client relationship and respondent’s actions with the State Bar. Therefore, the misrepresentations were directly connected to his practice of law.

Respondent has no appreciable mitigation and several factors in aggravation. In order to protect the public, the courts, and the legal profession; maintain the highest professional standards; and preserve public confidence in the legal profession, discipline consisting of a two-year period of stayed suspension, as well as a two-year period of probation with conditions including actual suspension for one year is appropriate.

Case law is in accord. In *Levin v. State Bar* (1989) 47 Cal.3d 1140, the attorney made a factual misrepresentation regarding his authority to settle a matter to the opposing counsel in order to reach a settlement. In a second matter, he settled a client’s case without her approval or knowledge and then did not distribute her settlement funds to her, but instead through a third party. He was found culpable of violating Business and Professions Code, section 6068(d) and 6106 as well as communicating with a represented party.

In aggravation, the *Levin* attorney attempted to conceal his dishonest acts and there were multiple similar acts of misconduct. In mitigation, the *Levin* attorney had an 18-year period of discipline-free history prior to the misconduct and he had an additional several years of discipline-free history subsequent to the misconduct. The Supreme Court imposed discipline including a three-year period of stayed suspension and a six-month period of actual suspension.

Here, the misconduct is similar to the misconduct in *Levin* in that respondent attempted to conceal his wrongdoing and thereby engaged in conduct constituting moral turpitude. However, unlike the attorney in *Levin*, respondent failed to perform for two clients and collected illegal fees. Respondent's mitigation is slight and his misconduct is more aggravated than that of the attorney in *Levin*. Therefore, a greater period of actual suspension is appropriate.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of November 30, 2017, the discipline costs in this matter are estimated to be \$4,165. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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

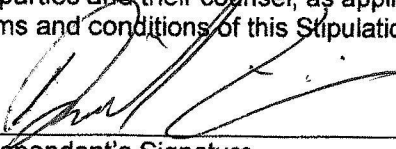

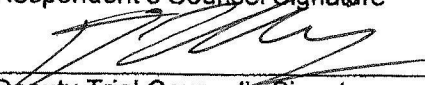
Respondent may not receive MCLE credit for completion of **State Bar Ethics School**. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: DAVID GREGORY GRAZIANI	Case number(s): 16-O-17719 17-O-01558
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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.

<u>11/30/2017</u> Date	 Respondent's Signature	<u>David Graziani</u> Print Name
<u>12/1/17</u> Date	 Respondent's Counsel Signature	<u>Susan Margolis</u> Print Name
<u>12-4-17</u> Date	 Deputy Trial Counsel's Signature	<u>Drew Massey</u> Print Name

(Do not write above this line.)

In the Matter of:
DAVID GREGORY GRAZIANI

Case Number(s):
16-O-17719
17-O-01558

ACTUAL SUSPENSION ORDER

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

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

On page 7 of the Stipulation at paragraph b.: "No later than 30 days prior to the expiration" is deleted and "No later than 120 days prior to the expiration" is added in its place.

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.)**

December 15, 2017
Date

Cynthia Valenzuela
CYNTHIA VALENZUELA
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 Los Angeles, on December 15, 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 Los Angeles, California, addressed as follows:

SUSAN LYNN MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

DREW D. MASSEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 15, 2017.



Mazie Yip
Case Administrator
State Bar Court