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**State Bar Court of California
Hearing Department
San Francisco
ACTUAL SUSPENSION**



<p>Counsel for the State Bar</p> <p>Johnna G. Sack Senior Trial Counsel The State Bar of California 180 Howard Street San Francisco, CA 94105 (415) 538-2357</p> <p>Bar # 270534</p>	<p>Case Number(s): 16-O-17734;17-O-03381</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>NOV 28 2018 <i>ms</i></p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Merri A. Baldwin Rogers Joseph O'Donnell 311 California St., 10th Floor San Francisco, CA 94104 (415) 956-2828</p> <p>Bar # 141957</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: JOHN LOUIS MLNARIK</p> <p>Bar # 257882</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 **December 1, 2008.**
- (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."

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. It is recommended that (check one option only):
- Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.
 - Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. One-half of the costs must be paid with Respondent's membership fees for each of the following years:

If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs."
 - Costs are entirely waived.

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

- (1) **Prior record of discipline:**
- (a) State Bar Court case # of prior case:
 - (b) Date prior discipline effective:
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline:
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.

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- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. **See page 13.**
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur. **See page 14.**
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of Respondent's misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced Respondent.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.

- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct, Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by Respondent, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond Respondent's control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of Respondent's misconduct. **See page 14.**
- (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 13.

Community Service, see page 14.

D. Recommended Discipline:

- (1) **Actual Suspension:**

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

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

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

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

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

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

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

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

- (2) **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3) **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.
- (4) **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) **Quarterly and Final Reports:**
- a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.
- b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
- c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

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

- (7) **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (8) **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because
- (9) **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (10) **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within _____ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete _____ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (11) **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.
- (12) **Minimum Continuing Legal Education (MCLE):** Within _____ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete _____ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and must

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

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

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

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

- (1) **Multistate Professional Responsibility Examination Within One Year or During Period of Actual Suspension:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Respondent's actual suspension, whichever is longer, and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2) **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because
- (3) **California Rules of Court, Rule 9.20:** Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

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

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

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

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Atheam v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (5) **California Rules of Court, Rule 9.20, Requirement Not Recommended:** It is not recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, because
- (6) **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

8. On July 29, 2016, Ms. Storozinski terminated respondent. On July 30, 2016, after Ms. Storozinski terminated respondent's services, respondent charged Ms. Friedman's credit card \$13,828.33 for Ms. Storozinski's legal fees without Ms. Friedman's knowledge or consent.
9. On October 8, 2018, respondent refunded Ms. Friedman for all legal fees he charged her in Ms. Storozinski's matter. This was after respondent knew that Ms. Friedman complained to the State Bar.

CONCLUSIONS OF LAW:

10. By charging Kia Friedman's credit card for \$13,828.33 without her knowledge or consent, and after respondent's services were terminated, respondent intentionally committed an act involving moral turpitude, dishonesty, or corruption, and willfully violated Business and Professions Code, section 6106.
11. By agreeing to negotiate a mortgage loan modification or other mortgage loan forbearance for a fee for his client, Ludette Storozinski, and thereafter entering into an agreement for receiving fees prior to the completion of all services, and collecting \$5,000 on behalf of Ms. Storozinski before respondent had fully performed each and every service respondent had been contracted to perform or represented to the client that respondent would perform, in violation of Civil Code section 2944.7, respondent willfully entered into an agreement for and collected an illegal fee in willful violation of former rule 4-200(A), Rules of Professional Conduct.
12. By agreeing to negotiate a mortgage loan modification or other mortgage loan forbearance for a fee for his client, Ludette Storozinski, and thereafter charging Ms. Storozinski an additional \$13,828.33 before respondent had fully performed each and every service respondent had been contracted to perform or represented to the client that respondent would perform, in violation of Civil Code section 2944.7, respondent willfully entered into an agreement for and charged an illegal fee in willful violation of former rule 4-200(A), Rules of Professional Conduct.
13. By accepting \$5,500 from Kia Friedman as compensation for consulting and representing Ludette Storozinski, without obtaining Ms. Storozinski's informed written consent to receive such compensation for the consultation and representation of Ms. Storozinski, respondent willfully violated former rule 3-310(F) of the Rules of Professional Conduct.

State Bar Case No. 17-O-0338 (Complainant: Aro Ebenhahn)

FACTS:

14. In December 2016, Aro Ebenhahn hired respondent to represent him in a lawsuit that was filed against him. Respondent requested that Mr. Ebenhahn pay him \$2,500 in advanced fees.
15. On December 6, 2016, Mr. Ebenhahn provided respondent's law firm with the signed fee agreement, \$1,000 cash, and a credit authorization for the additional \$1,500 in advanced fees.
16. Between December 2016 and March 2017, respondent had Mr. Ebenhahn's written authorization to charge his credit card for payment of any additional legal fees. On March 15, 2017, Mr.

Ebenhahn emailed respondent stating that he was withdrawing his authorization for respondent to charge his credit card for payment of legal fees.

17. In March 2017, respondent and Mr. Ebenhahn had a disagreement on how the case should proceed and the amount of legal fees respondent had charged Ms. Ebenhahn. As a result of this disagreement, on April 5, 2017, respondent's office manager sent Mr. Ebenhahn a substitution of attorney and an invoice, stated respondent would be withdrawing from his matter, and demanded Mr. Ebenhahn pay the bill in full.
18. On April 10, 2017, Mr. Ebenhahn sent respondent an email terminating respondent's services.
19. On April 17, 2017, after Mr. Ebenhahn terminated his credit card authorization and respondent's services, respondent's office attempted to charge Mr. Ebenhahn's credit card \$6,200, which was the total amount of outstanding legal fees. Mr. Ebenhahn's credit card company declined this charge.
20. Then, that same day, respondent's office attempted again to charge Mr. Ebenhahn's credit card for \$3,000, this time in three separate transactions of \$1,000 each. The credit card company processed one of these charges and declined the other two. Mr. Ebenhahn's credit card company ultimately reversed this \$1,000 charge.
21. Respondent's office did not obtain Ms. Ebenhahn's consent to charge his credit card for legal fees after Mr. Ebenhahn expressly withdrew his authorization on March 15, 2017, and after Mr. Ebenhahn terminated respondent on April 10, 2017.

CONCLUSIONS OF LAW:

22. By attempting to charge Aro Ebenhahn's credit card for \$6,200 without his knowledge or consent, and after Mr. Ebenhahn withdrew his authorization to charge the credit card and terminated respondent's services, respondent intentionally committed an act involving moral turpitude, dishonesty, or corruption, and willfully violated Business and Professions Code, section 6106.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)). Respondent committed multiple acts of misconduct by failing to obtain authorization for non-client payment of legal fees, charging Ms. Friedman's credit card without her knowledge or authorization, accepting advance fees on a loan modification, and charging Mr. Ebenhahn's credit card without his knowledge or authorization.

MITIGATING CIRCUMSTANCES.

Pre-filing Stipulation. Respondent admitted to the misconduct and entered into this stipulation fully resolving this matter. Respondent's cooperation at this early stage will save the State Bar significant resources and time. Respondent's cooperation in this regard is a mitigating factor in this resolution. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigation credit was given for entering into a stipulation as to the facts and culpability].)

Absence of Prior Record of Discipline (Std. 1.6(a)). Respondent was admitted to the State Bar on December 1, 2008. Respondent had been practicing for 8 years without any discipline prior to the current misconduct and would be entitled to some mitigation. (See *Hawes v. State Bar* (1990) 51 Cal. 3d 587, 596 [over 10 years is worth significant weight in mitigation]; *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 44 [7 years' worth only slight mitigation]; *In re Naney* (1990) 51 Cal. 3d 186, 196 [7 years not a strong showing of mitigation].)

Demonstration of Good Character (Std. 1.6(f)). Respondent should receive mitigation for providing ten letters of good character from references from both the legal and general community attesting to his integrity, honesty, and professionalism.

Community Service: Respondent has donated his time to various legal committees, organizations, and boards. Respondent has been an active member of the Santa Clara County Bar Association since 2010, where he has served in numerous leadership positions, including Chair of the Barrister Committee in 2011, on the Board of Trustees from 2010-2016, Treasurer in 2012, President Elect in 2014, and President in 2015. Respondent has also been an active member of the William Ingram Inn of Court since 2005; the Don Edwards Inn of Court since 2010; the National Association of Consumer Bankruptcy Attorneys since 2008; the St. Thomas More Society since 2008; and the Chapter 13 Bankruptcy Committee, San Jose Division, since 2008.

Respondent is also very active in his church, St. Justin Parish Community, as a parishioner, lector, and Eucharistic Minister. Respondent has performed substantial community service with his church through being an active member of St. Justin Stablemates since 2012. Further, respondent is the Judge Advocate and a founding member of the Sons of the American Legion Squadron at Legion Post 419, a member of Rotary International since 2012, and currently serves as the 2018-2019 President of the Santa Clara Rotary Club. (See *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [attorney's community service is mitigating].)

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(s) provides that, "If a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed." Here, respondent has committed multiple acts of misconduct. The most severe sanction applicable to respondent's misconduct is Standard 2.11 for acts of moral turpitude. Standard 2.11 states: "Disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact."

Case law is instructive. In *Jackson v. State Bar* (1975) 15 Cal.3d 372, Jackson represented a client, who was a general contractor, in an action against a subcontractor. After receiving the settlement funds on behalf of his client, Jackson learned that an attorney, with whom he shared an office, had a claim of unpaid legal fees against Jackson's client for \$673. Without his client's knowledge or consent, Jackson deducted \$673 from his client's settlement funds and paid the other attorney. The court found that Jackson misappropriated monies due to his client and, in doing so, committed acts of moral turpitude. Jackson received a six-month actual suspension.

In *the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, Taylor received a six-month actual suspension for charging pre-performance loan modification fees in eight client matters and failing to provide the required disclosures in one case. In aggravation, the court found multiple acts of wrongdoing, significant client harm, and lack of remorse aggravated his misconduct. The court gave Taylor mitigation for good character.

In *the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437, DeClue received a six-month actual suspension for illegally charging and collecting advance fees for loan modifications in two client matters. DeClue did not have any factors in mitigation. The court found a prior record of discipline, significant harm to his clients, failure to pay restitution, and uncharged misconduct, aggravated his misconduct.

In *the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, Shalant was disbarred for charging and collecting an illegal fee in a medical malpractice case in violation of the Medical Injury Compensation Reform Act and engaging in an act of moral turpitude by breaching his fiduciary duties in a coercive and abusive manner, i.e. by threatening to withdraw days before the client's deposition if the client did not agree to sign a new fee agreement. Shalant had an extensive prior record of discipline.

Here, respondent's misconduct is similar to that of *Taylor* and *DeClue*, as he charged and collected advance fees for a loan modification; however, respondent's misconduct is more egregious than that of *Taylor* and *DeClue* because his misconduct involved acts of moral turpitude, similar to *Jackson* and *Shalant*. *Shalant* is more egregious than respondent's matter because of Shalant's prior record of discipline. *Jackson* involved misconduct in one client matter, whereas respondent committed acts of moral turpitude in two client matters through the charging of credit cards for legal fees after his clients terminated his services and without their consent. Accordingly, a more significant discipline than *Jackson* is warranted in respondent's matter. Therefore, a one-year actual suspension is the appropriate

sanction that serves the primary purpose of discipline: public protection and the integrity of the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

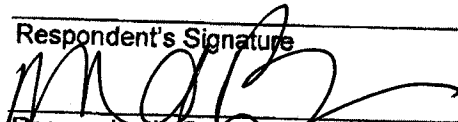
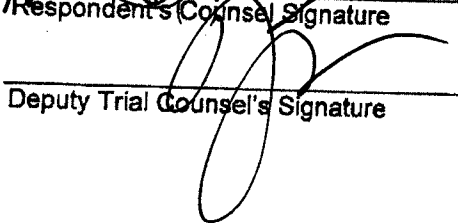
Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of November 1, 2018, the prosecution costs in this matter are \$6,600. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: JOHN LOUIS MLNARIK	Case Number(s): 16-O-17734; 17-O-03381
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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.

Date	Respondent's Signature	JOHN L. MLNARIK
11/7/18		Print Name
Date	Respondent's Counsel Signature	MERRI A. BALDWIN
11/7/18		Print Name
Date	Deputy Trial Counsel's Signature	JOHNNA G. SACK
		Print Name

(Do not write above this line.)

In the Matter of: JOHN LOUIS MLNARIK	Case Number(s): 16-O-17734; 17-O-03381
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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.

The second page 17 of the stipulation is modified to be page 17a.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See Rules Proc. of State Bar, rule 5.58(E) & (F).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order. (See Cal. Rules of Court, rule 9.18(a).)**

Date

11/28/18


MANJARI CHAWLA
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on November 28, 2018, I deposited a true copy of the following document(s):

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

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

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

MERRI A. BALDWIN
ROGERS JOSEPH O'DONNELL
311 CALIFORNIA ST 10TH FL
SAN FRANCISCO, CA 94104

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

Johnna G. Sack, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 28, 2018.



Vincent Au
Court Specialist
State Bar Court