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**State Bar Court of California  
Hearing Department  
Los Angeles  
DISBARMENT**

 **ORIGINAL**

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Bar # 217357

Case Number(s):  
**17-O-03155  
17-O-05768**

For Court use only

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**PUBLIC MATTER**

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Bar # 198354



Submitted to: **Settlement Judge**

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND  
DISPOSITION AND ORDER APPROVING; ORDER OF  
INVOLUNTARY INACTIVE ENROLLMENT

**DISBARMENT**

PREVIOUS STIPULATION REJECTED

In the Matter of:  
**ALAN FRANK BROIDY**

Bar # 89430

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 **November 29, 1979**.
- (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 resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **15** 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."

(Effective July 1, 2018)

*RM*  
*1-25-19*

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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 are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs."
  - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:  
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

**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.
- (8)  **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See page 11.**
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10)  **Lack of Candor/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 11.**
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution. **See page 11.**
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

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

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

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- (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 pages 11-12.**
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**No Prior Record of Discipline, see page 12.**  
**Pretrial Stipulation, see page 12.**

**D. Recommended Discipline:**

**Disbarment**

Respondent is disbarred from the practice of law in California and Respondent's name is stricken from the roll of attorneys.

**E. Additional Requirements:**

- (1) **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).)

- (2)  **Restitution (Single Payee):** Respondent must make restitution in the amount of \$ \_\_\_\_\_, plus 10 percent interest per year from \_\_\_\_\_, to \_\_\_\_\_ (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5).

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- (3)  **Restitution (Multiple Payees):** Respondent must make restitution to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>
<b>Gayle Levine</b>	<b>\$370,916.76</b>	<b>September 6, 2016</b>
<b>Ronald Dunner, Francine Dunner and/or Sheri Nemtsov</b>	<b>\$150,000</b>	<b>December 31, 2016</b>

- (4)  **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:





8. On August 16, 2016, respondent wired \$1,925,000 from his Bank of America client trust account bearing account no. XXX-XXX-8839, to Mesa Sand Realty, LLC pursuant to the terms of the Stipulation.

9. On August 16, 2016, respondent transferred \$100,000 from this client trust account to his Bank of America interest checking account bearing account no. XXX-XXX-1468 without Ms. Levine's knowledge or consent, and thereafter used those funds for his own purposes.

10. On August 17, 2016, respondent transferred an additional \$300,000 from his Bank of America client trust account bearing account no. XXX-XXX-8839, to his Bank of America interest checking account bearing account no. XXX-XXX-1468, without Ms. Levine's knowledge or consent, and thereafter used those funds for his own purposes.

11. On August 18, 2016, respondent wrote check no. 991 for \$11,425.05 against his Bank of America client trust account bearing account no. XXX-XXX-8839 to the Osborn Maledon law firm. Check no. 991 was negotiated on August 19, 2016.

12. On August 18, 2016, respondent also wired \$100,000 from his Bank of America client trust account bearing account no. XXX-XXX-8839, to his U.S. Bank client trust account bearing account no. XXX-XXX-5977, without Ms. Levine's knowledge or consent.

13. On August 12, 2016, respondent wrote check no. 1025 for \$975 to the "Office of the U.S. Trustee" against his U.S. Bank client trust account bearing account no. XXX-XXX-5977. Check no. 1025 was negotiated on August 25, 2016. Respondent thereafter used the remaining funds that he wired from his Bank of America client trust account to his U.S. Bank client trust account bearing account no. XXX-XXX-5977 for his own purposes. On August 1, 2016, the balance in respondent's U.S. Bank client trust account bearing account no. XXX-XXX-5977 was \$741.28 and on September 30, 2016, the balance in this account was \$23.28.

14. On August 23, 2016, respondent withdrew \$30,000 from his Bank of America client trust account bearing account no. XXX-XXX-8839, without Ms. Levine's knowledge or consent and thereafter used those funds for his own purposes.

15. On August 26, 2016, respondent wrote two separate checks totaling \$1,693 that were made payable to Alan F. Broidy, APC against his Bank of America client trust account bearing account no. XXX-XXX-8839.

16. Between September 1, 2016 and September 30, 2016, respondent withdrew \$1,749.10 from his Bank of America client trust account bearing account no. XXX-XXX-8839, without Ms. Levine's knowledge or consent, and thereafter used those funds for his own purposes.

17. On September 30, 2016, the ending balance in respondent's Bank of America client trust account bearing account no. XXX-XXX-8839 was \$57.90.

18. On September 6, 2016, respondent emailed Ms. Levine and David P. confirming that he had paid the sums owing under the Dismissal Order, "leaving a total of \$532,526.95," from which he deducted an additional \$20,000 to pay his "remaining fees." In this email, respondent further stated, "The

net balance was \$512,526.95. I will add an additional \$1,000 which more than covers any delay.” Respondent, however, did not immediately pay the promised funds to Ms. Levine.

19. Between October 2016 and November 2016, respondent sent text messages to David P. in which he promised that the funds would be paid to Ms. Levine and again offered to increase the amount owed to her.

20. In November 2016, Ms. Levine retained an attorney to assist her in recovering the sums due to her from respondent.

21. On November 23, 2016, respondent and his wife executed a promissory note in which they agreed to pay \$600,000 to Ms. Levine no later than December 14, 2016. The promissory note, which contained a provision that entitled Ms. Levine to recover attorney fees and costs in the event of default or collection, was secured by a deed of trust on respondent and his spouse’s residence. The deed of trust, which also contained a provision that entitled Ms. Levine to recover fees and costs in the event of default or collection, was recorded on November 28, 2016.

22. Respondent failed to fulfill his obligations under the promissory note by its maturity date of December 14, 2016, and thereafter made numerous promises to Ms. Levine and her attorney to pay the sums due but failed to do so.

23. On several occasions between September 6, 2016 and January 12, 2017, Ms. Levine, David P. and Ms. Levine’s attorney requested that respondent pay the entire balance of \$512,527.56 to Ms. Levine, but respondent failed to do so.

24. On May 17, 2017, Ms. Levine filed a State Bar complaint against respondent and on June 13, 2017, a State Bar Investigator sent a letter to respondent that sought his response to the allegations raised by Ms. Levine’s complaint.

25. In his July 26, 2017 written response to the State Bar’s investigative letter of June 13, 2017, respondent stated: “As you can see, on August 16, 2016, \$1,925,000 was wired to Mesa Sand Realty, LLC, the largest creditor of the Debtor’s Estate. As set forth in the enclosed letter to Osborn Maledon, a law firm in Phoenix and a creditor of the Debtor, a check in the sum of \$11,425.05 was mailed on August 18, 2016. Quarterly fees in the sum of \$975.00 were paid to the Office of the United States Trustee. The balance of the funds was \$532,527.56, all of which was distributed for my benefit. I waived any claim for any additional attorney’s fees against the Debtor.” Respondent also stated in his letter he was unable to pay Ms. Levine timely and was “awaiting funds to pay this obligation in full.”

26. Respondent did not cure the default on the promissory note and deed of trust and Ms. Levine was unable to foreclose on the deed of trust because respondent’s residence was in foreclosure on substantial senior encumbrances, which threatened her right to any recovery.

27. On March 15, 2018, Ms. Levine sold and assigned the promissory note and deed of trust to the highest bidder for \$230,000. After paying attorney fees and costs totaling \$88,389.20, Ms. Levine retained net proceeds of \$141,610.80 from the sale and assignment of the promissory note and deed of trust, leaving a balance of \$370,916.76 due from respondent.

28. To date, respondent has failed to pay the balance of \$370,916.76 due to Ms. Levine.



## CONCLUSIONS OF LAW:

29. By intentionally removing and using \$512,469.66 in funds belonging to Ms. Levine for his own purposes, which were on deposit in his client trust account at Bank of America and to which Ms. Levine was entitled, respondent misappropriated funds belonging to his client, and thereby committed an act of dishonesty in willful violation of Business and Professions Code, section 6106.

30. By failing to maintain the balance of \$512,469.66 in his client trust account at Bank of America on behalf of his client, Ms. Levine, respondent willfully violated former Rules of Professional Conduct, rule 4-100(A)

31. By failing to promptly pay Ms. Levine any portion of the \$512,527.56 that belonged to her and to which she was entitled, following requests for payment, respondent willfully violated former Rules of Professional Conduct, rule 4-100(B)(4).

### Case No. 17-O-05768 (Complainants: Sheri Nemtzov and Ronald Dunner)

32. On May 12, 2014, Sheri Nemtzov employed respondent to seek relief from the automatic stay and represent her interests in the chapter 7 bankruptcy case of her then spouse ("debtor") then pending in the U.S. Bankruptcy Court for the Central District of California, case no 1:14-bk-12399-VK. During the pendency of the representation respondent communicated with Ms. Nemtzov primarily through her father, Ronald Dunner.

33. On May 21, 2014, the court granted the request for relief from the automatic stay that respondent had filed on Ms. Nemtzov's behalf.

34. Because the debtor did not disclose all community assets on his schedules and had withheld most of Ms. Nemtzov's personal property from her, respondent advised Ms. Nemtzov that she should request that the court deny the debtor's discharge. Ms. Nemtzov thereafter authorized respondent to pursue denial of the debtor's discharge on her behalf.

35. Pursuant to a bankruptcy court order filed on September 8, 2014, the date for filing a complaint/motion objecting to or seeking a ruling denying the debtor's discharge was extended to November 3, 2014. Respondent filed a complaint/motion objecting to discharge of the debtor on Ms. Nemtzov's behalf on November 4, 2014.

36. November 5, 2014, respondent informed Mr. Dunner that he was one day late in filing the complaint/motion on Ms. Nemtzov's behalf, and that because of this procedural error, the complaint/motion objecting to the discharge was denied without review of the merits. The debtor's discharge was subsequently granted on January 21, 2015.

37. On January 29, 2016, Mr. Dunner received an IRS Form 1099 for \$81,400 from the debtor, based on the debtor's alleged fraudulent claim that this amount represented income received by Mr. Dunner from the debtor's business entity.

38. In February 2016, while continuing to represent Ms. Nemtzov in the bankruptcy matter, respondent was retained to and began representing Mr. Dunner in the same bankruptcy matter. When respondent undertook representation of both clients, he did not obtain informed, written conflict and consent waivers from either client.

39. Subsequent to Mr. Dunner's receipt of the Form 1099, respondent advised Mr. Dunner and Ms. Nemtzov to initiate an adversary proceeding and file a motion to revoke the debtor's discharge, because this was new information acquired after the discharge was granted. Mr. Dunner and Ms. Nemtzov consented to the filing of an adversary proceeding.

40. Thereafter, respondent filed an adversary complaint on behalf of Mr. Dunner and Ms. Nemtzov to revoke the debtor's discharge under adversary case no. 1:16-ap-0101. The adversary complaint was subsequently dismissed as part of a mediated global settlement that was agreed to during a mediation session on September 29, 2016.

41. On September 29, 2016, during the global mediation session, respondent stated to Mr. Dunner that he would personally pay Mr. Dunner and Ms. Nemtzov \$125,000 as an inducement and incentive for them to forgo further pursuit of their legal rights and remedies and settle their interests in the bankruptcy matter, and both clients agreed.

42. In reliance on respondent's verbal promise to pay them \$125,000, Mr. Dunner, and his wife, an apparent party to the mediation proceedings, and Ms. Nemtzov executed a settlement agreement with the debtor to resolve the issues in dispute in the bankruptcy matter. The settlement agreement was subsequently approved by the bankruptcy court.

43. In October 2016, after respondent failed to pay the \$125,000 as agreed, he then promised Mr. Dunner that he would pay \$135,000.

44. In November 2016, while still owing the \$135,000, respondent requested a \$10,000 short-term loan from Mr. Dunner in order to repay a personal debt. In exchange for the \$10,000 loan, respondent's stated to Mr. Dunner that he would pay Mr. Dunner and Ms. Nemtzov \$150,000 – the \$135,000 settlement, repayment of the \$10,000 loan, and an additional \$5,000 as appreciation for Mr. Dunner loaning respondent \$10,000. Respondent stated to Mr. Dunner that he would pay them \$150,000 by the end of December 2016.

45. Mr. Dunner agreed to loan respondent the \$10,000 he requested and on November 28, 2016, Mr. Dunner wired transferred \$10,000 into respondent's U.S. Bank account with account no. XXX-XXX-5894. Mr. Dunner's loan to respondent was not secured.

46. Respondent did not provide Mr. Dunner with a written disclosure that advised Mr. Dunner of the terms of the loan agreement or of his option to seek the advice of an independent attorney before entering into the loan agreement, and did not give the Mr. Dunner a reasonable opportunity to seek that advice. Mr. Dunner did not consent in writing to the terms of the loan agreement.

47. Respondent did not pay Mr. Dunner and Ms. Nemtzov the \$150,000 by the end of December 2016.

48. On June 20, 2017, respondent met with Mr. Dunner and executed a promissory note for \$150,000, with payment due no later than August 21, 2017. Respondent failed to pay the \$150,000 by the August 21, 2017 due date or any time subsequent thereto. Thereafter, Mr. Dunner and Ms. Nemtzov retained an attorney to represent their interests and file an action on their behalf to recover under the promissory note.

49. To date, respondent has failed to pay the \$150,000 owed to Mr. Dunner and Ms. Nemtsov.

#### CONCLUSIONS OF LAW:

50. By and failing to file a complaint/motion on Ms. Nemtsov's behalf, objecting to discharge of or denying discharge of the debtor on or before the court ordered extended deadline of November 3, 2014, respondent willfully violated former Rules of Professional Conduct, rule 3-110(A).

51. By failing to obtain informed, written consent from Ms. Nemtsov and Mr. Dunner to represent them in the debtor's bankruptcy matter, respondent failed to inform the clients of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the clients, in willful violation of former Rules of Professional Conduct, rule 3-310(C)(1).

52. By intentionally stating to Mr. Dunner, that he would pay him and Ms. Nemtsov \$125,000 as an inducement and incentive for them to forgo further pursuit of their legal rights and remedies and settle their interests in the bankruptcy matter, when respondent knew that the statements were false and misleading because he knew that he had no ability to pay them as his personal bank accounts were depleted, his assets were encumbered and he was heavily indebted to others, respondent willfully violated Business and Professions Code, section 6106.

53. By failing to obtain Mr. Dunner's written consent to the terms of the loan agreement, failing to provide Mr. Dunner with a written disclosure that advised Mr. Dunner of the terms of the loan agreement or of his option to seek the advice of an independent attorney before entering into the loan agreement, and by failing to give Mr. Dunner a reasonable opportunity to seek advice of an independent attorney, respondent willfully violated former Rules of Professional Conduct, rule 3-300.

#### AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent's conduct is aggravated by multiple acts of misconduct across two client matters.

**Significant Harm to Client (Std. 1.5(j)):** Respondent's misconduct caused significant harm to his clients. Ms. Levine was deprived of over \$500,000 for more than a year and a half. Ms. Nemtsov's legal claims were extinguished as a result of respondent's misconduct. Mr. Dunner and Ms. Nemtsov were further harmed by respondent's self-dealing, and failure to litigate their interests fully, resulting in lost claims or causes of action. Furthermore, the clients in each of the two matters had to hire new counsel to represent and protect their interests and seek recovery from respondent because of his misconduct.

**Failure to Make Restitution (Std. 1.5(m)):** To date, respondent has failed to make restitution to Ms. Nemtsov and Mr. Dunner, and has failed to make full restitution to Ms. Levine.

#### MITIGATING CIRCUMSTANCES.

**Good Character (Std. 1.6(f)):** Respondent's good character has been attested to by nine individuals who are aware of his misconduct and who still hold him in high regard. Five attorneys who have known respondent from between 18 to 42 years provided declarations attesting his integrity, competence, and dedication to his clients and his religious community. Two rabbis, one of whom is a university professor, from respondent's synagogue who have known him for 20 and 40 years respectively, provided letters that described respondent's honesty, devotion to and leadership within his religious

community. Two of respondent's current clients, a husband and wife team who have known respondent for 11 years and who own a financial services business, also provided a letter attesting to respondent's competence as an attorney and confidence in his ethics.

**No Prior Record of Discipline:** Respondent was admitted on November 29, 1979 and has practiced discipline free prior to the misconduct herein. Although respondent's misconduct is serious, he is entitled to mitigation. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal State Bar Ct. Rptr. 41 [attorney's many years in practice with no prior discipline considered mitigating even when misconduct at issue was serious]; *Friedman v. State Bar* (1990), 50 Cal. 3d 235, 245 [20 years of discipline free practice is "highly significant" mitigation].)

**Pretrial Stipulation:** Respondent has stipulated to facts, conclusions of law, and disposition in order to resolve this disciplinary proceeding prior to trial, thereby avoiding the necessity of trial, and saving State Bar and State Bar Court time and resources. (*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].) By entering into this stipulation, respondent has accepted responsibility for his misconduct.

#### **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) further 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." The most severe sanctions applicable to respondent's misconduct are Standards 2.1(a) and 2.11. Standard 2.1(a) governs the discipline to be imposed for culpability for misappropriation of entrusted funds, and provides in relevant part as follows:



Disbarment is the presumed sanction for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate.

Standard 2.11, which applies to respondent's violation of Business and Professions Code section 6106, provides:

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. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law.

Of the multiple ethical rules respondent violated in these two client matters, his misappropriation of entrusted funds is the most egregious. Respondent intentionally and dishonestly misappropriated \$512,469.66, over half of a million dollars, of entrusted funds belonging to Ms. Levine within a few days after receiving the wire transfer from Mesa. He thereafter used the misappropriated funds for his own purposes to pay of personal expenses and obligations. Moreover, respondent's misconduct in these two matters is extensive, long-standing, directly related to the practice of law. In addition to his misconduct in the Levine matter, respondent failed to perform with competence in the Nemtzov and Dunner matter, made significant and material misrepresentations to these clients, and entered into a business transaction with Mr. Dunner among other misconduct.

Respondent's misconduct is significantly aggravated by multiple acts, significant client harm and failure to make any restitution in one matter and full restitution the other matter. Given the gravity and seriousness of respondent's misconduct, his mitigation consisting of thirty-five years of discipline free practice prior to the misconduct herein, coupled with good character and pretrial stipulation is not sufficiently compelling to depart from the presumed sanction set forth in Standards 2.1(a) or 2.11. Therefore, 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, disbarment, on the terms and conditions set forth herein is the appropriate sanction.

Case law also supports the sanction of disbarment. Misappropriation generally warrants disbarment. (*Kelly v. State Bar* (1988) 45 Cal.3d 649; *McKnight v. State Bar* (1991) 53 Cal.3d 1025.) Intentional misappropriation of entrusted funds, even without a prior record of discipline, warrants disbarment in the absence of compelling mitigation. (*Kaplan v. State Bar* (1991) 52 Cal. 3d 1067, 1071-1073; *Chang v. State Bar* (1989) 49 Cal. 3d 114, 128.) In *Kelly v. State Bar, supra*, 45 Cal.3d 649, an attorney who misappropriated \$19,597.50 in client trust funds, failed to account to the client, wrongfully contacted an adverse party without knowledge or consent of counsel, and committed moral turpitude was disbarred. The attorney in *Kelly* had no prior record of discipline and had been in practice for seven and a half years at the time of the misconduct. The court found that the amount misappropriated was "clearly significant" and that there were no mitigating factors, compelling or otherwise. (*Id.* at 658.) The attorney in *Kelly* offered no explanation for his acts and the Court found that he "acted in a self-interested fashion" having spent the entire amount of misappropriated funds. (*Id.* at 659.)



In *Kaplan v. State Bar, supra*, 52 Cal.3d 1067, the California Supreme Court disbarred an attorney who intentionally misappropriated \$29,000 from his law firm. In mitigation, the attorney had no prior record of discipline in 12 years of practice and suffered emotional problems. However, the court did not find the mitigation sufficiently compelling to warrant a sanction less than disbarment. The attorney in *Kaplan* placed \$29,000 worth of checks payable to his law firm and employer into his personal bank account. He reported himself to the State Bar after his employer confronted him and urged him to self-report, and he subsequently reimbursed the law firm. However, the attorney's misconduct was compounded when he made substantial misrepresentations to the State Bar during the course of its investigation. The court noted that the attorney's misconduct was "part of a purposeful design to defraud his partners." (*Id.* at 1071.)

Like the attorneys in *Kelly* and *Kaplan*, respondent engaged in a course of self-dealing and intentionally misappropriated a significant sum of entrusted funds. Respondent's misconduct in these two client matters also involved other serious and significant breaches of his ethical and professional duties. Therefore, in order to discharge the purposes of attorney discipline set forth in standard 1.1, disbarment is the only appropriate sanction.

#### **WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY.**

The parties waive any variance or discrepancy between the Notice of Disciplinary Charges filed in this matter and the factual statements and conclusions of law set forth in this stipulation.

#### **DISMISSALS.**

The parties respectfully request that the court dismiss the following count in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
17-O-05768	8	Business and Professions Code, section 6106

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of January 9, 2019, the prosecution costs in this matter are approximately \$7,176. 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: <b>ALAN FRANK BROIDY</b>	Case Number(s): 17-O-03155 17-O-05768
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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>1/25/19</u> Date	<u>Alan Frank Broidy</u> Respondent's Signature	<u>Alan Frank Broidy</u> Print Name
_____ Date	_____ Respondent's Counsel Signature	<u>Zachary D. Wechsler</u> Print Name
_____ Date	_____ Deputy Trial Counsel's Signature	<u>Sherell N. McFarlane</u> Print Name


(Do not write above this line.)

In the Matter of:  
ALAN FRANK BROIDY

Case Number(s):  
17-O-03155  
17-O-05768

### 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.

_____	_____	Alan Frank Broidy
Date	Respondent's Signature	Print Name
1/25/19		Zachary D. Wechsler
Date	Respondent's Counsel Signature	Print Name
_____	_____	Sherell N. McFarlane
Date	Deputy Trial Counsel's Signature	Print Name

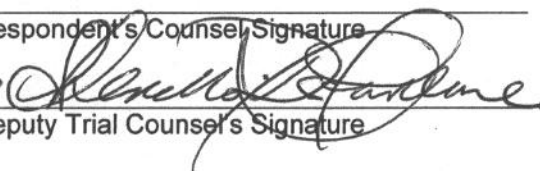
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In the Matter of:  
ALAN FRANK BROIDY

Case Number(s):  
17-O-03155  
17-O-05768

### 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.

_____	_____	Alan Frank Broidy
Date	Respondent's Signature	Print Name
_____	_____	Zachary D. Wechsler
Date	Respondent's Counsel Signature	Print Name
January 28, 2019		Sherell N. McFarlane
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: ALAN FRANK BROIDY	Case Number(s): 17-O-03155 17-O-05768
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### DISBARMENT 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 1 of the Stipulation, at paragraph A.(3), line 3, "15" is deleted, and in its place is inserted "17".
2. On page 9 of the Stipulation, at numbered paragraph 30, line 1, "\$512,469.66" is deleted, and in its place is inserted "\$512,527.56".

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).)**

Respondent ALAN FRANK BROIDY is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

February 26, 2016  
Date

Rebecca Meyer Rosenberg  
REBECCA MEYER ROSENBERG  
Judge Pro Tem 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 Los Angeles, on February 26, 2019, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

ZACHARY D. WECHSLER  
LAW OFFICE OF ZACHARY D. WECHSLER, APC  
21515 HAWTHORNE BLVD, STE 610  
TORRANCE, CA 90503 - 6547

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

SHERELL N. McFARLANE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 26, 2019.



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Paul Barona  
Court Specialist  
State Bar Court