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STATE BAR COURT
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LOS ANGELES

BEFORE THE STATE BAR COURT

OF THE STATE OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In The Matter of RONALD W. GRIGG, Member No. 140947, A Member of the State Bar.	Case No. 06-O-14925-RAP **RESPONSE TO NOTICE OF DISCIPLINARY CHARGES** (Rule 1230, Rules of Practice of the State Bar Court)

TO THE OFFICE OF THE CHIEF TRIAL COUNSEL OF THE STATE BAR OF CALIFORNIA AND TO ITS COUNSEL OF RECORD:

Respondent Ronald W. Grigg responds to the Notice of Disciplinary Charges as follows:

Respondent's Preliminary Statement

This disciplinary proceeding arises from a complex underlying matter involving respondent Ronald W. Grigg ("Grigg"). Respondent provided legal services to Blaine Chaney ("Chaney") pursuant to separate written hourly and contingency fee agreements.

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To secure payment of the legal fees owed to Grigg by Chaney pursuant to the contingency fee agreement, Grigg entered into a security agreement with Chaney to secure assets Grigg obtained for Chaney as a direct result of the services provided under the contingency agreement. Grigg complied with the requirements of Rule 3-300 by advising Chaney in writing to seek independent legal advice a month before Chaney signed the security agreement, the terms of which were fully understood and accepted by Chaney.

During his representation of Chaney, Grigg kept Chaney fully advised of all money received and distributed by Grigg on Chaney's behalf, including providing account statements, monthly billing invoices and even defining the settlement payment schedule in the settlement agreement itself. Grigg also promptly responded to requests for accounting from Chaney's subsequent counsel by providing the complete client file including an accounting of monies received and distributed for the benefit of Chaney. During Respondent's representation of Chaney, Chaney made continuing laudatory statements orally and in writing attesting to the quality of services Respondent provided. In alleging that Grigg failed to account to Chaney by failing to respond to Chaney's request for accounting, the State Bar ignores exculpatory facts that demonstrate that Grigg did in fact account to Chaney.

Eight months after Grigg won a substantial January 12, 2006 settlement for Chaney, Chaney sued Grigg in connection with the services provided and the fee charged by Grigg, which included the issue of providing an accounting of the present whereabouts of the funds Grigg had received during the representation. Despite the express denial of accounting and injunctive relief in the arbitration, which the State Bar asserts is controlling, Chaney together with his lawyer Joseph Yanny later obtained an injunction that included mandatory provisions requiring Grigg to account, despite the denial of such relief by the arbitrator earlier.

By misrepresenting the extent of the arbitrator's award, a conflicting injunction that included mandatory provisions requiring Grigg to account was improperly obtained by Chaney. Grigg appealed this injunction, and consequently did not comply with the conflicting injunction based upon a reasonable and good faith belief that the order was invalid, stayed based on applicable law governing such an appeal, his reliance on his appellate counsel's advice, and based on rulings in

prior proceedings. Thereafter, on December 5, 2011 Grigg's legal counsel filed for Chapter 7 bankruptcy protection in the United States Bankruptcy Court, Western District of Pennsylvania, initiating an automatic stay against all collection efforts, which reinforced the determination that the errant injunction that included mandatory provisions requiring Grigg to account was stayed.

The State Bar does not include the exculpatory facts in the Notice of Disciplinary Charges pertaining to the fact that prior to the arbitration proceeding, the Honorable Aurelio Munoz ruled that the contingency agreement between Grigg and Chaney was valid, a ruling that was later reaffirmed when Judge Munoz denied Chaney's motion for reconsideration of the court's order, and reemphasized that "the court found the agreement to be valid." The State Bar furthers fails to mention in the NDC any of the exculpatory evidence regarding the true contents of the arbitrator's *final* award, which denied accounting and injunctive relief to Chaney, and the State Bar completely ignores the prior rulings from the court that the permanent injunctive order was not enforceable pending Grigg's appeal.

Grigg's handling of Chaney's matters and funds, as well as his actions surrounding the wrongfully obtained injunction that included mandatory provisions requiring Grigg to account, did not involve any acts warranting discipline, and certainly did not involve acts of moral turpitude.

Answer to Specific Allegations Contained in the Notice of Disciplinary Charges

1. Respondent admits that he was admitted to the practice of law in the State of California on June 6, 1989.

COUNT ONE

2. Respondent objects to the allegation in Paragraph 2 which constitutes a legal conclusion and, without waiving this objection, denies that he committed acts in willful violation of Rules of Professional Conduct, rule 3-300.

3. Respondent objects to the assertions in Paragraph 3 on the grounds they are compound. Without waiving this objection, Respondent admits in part and denies in part the

allegations contained in Paragraph 3. Respondent admits that on August 31, 2005, Blaine Chaney ("Chaney") hired Respondent to represent him in connection with the dissolution of Chaney's marriage to Sarah MacMillan Chaney (MacMillan) pursuant to an hourly fee agreement, which provided for a $25,000 retainer, charged at a reduced rate of $400 an hour. On August 31, 2005, in addition to the hourly retainer agreement, Chaney retained Grigg to provide services, wholly separate and apart from the services under the hourly fee agreement, in connection with Chaney's claims as a class-one beneficiary to a certain MacMillan family trust. Chaney was in substantial debt at that time, so Grigg agreed to represent him relating to his trust claims under a contingency fee agreement, charging a reasonable and modest rate of 15% of gross recovery for Chaney.

In further response to Paragraph 3, Grigg lacks personal knowledge to admit or deny the allegation that Chaney's and MacMillan's sole source of income during their marriage was derived from trust payments received as beneficiaries of MacMillan family trusts, and on that ground, Respondent denies that allegation.

Respondent admits the allegation that Chaney and MacMillan entered into an Antenuptial Agreement governed by Minnesota law, which provided that Chaney would not be entitled to any spousal support or division of property upon separation or dissolution of marriage, which in effect, maintained Sarah's interests in her family fortune as separate property and precluded Chaney from asserting any claim against such interest. When Chaney and MacMillan divorced, Chaney was entitled to receive nothing as a result of his marriage to MacMillan.

Respondent denies the allegation in Paragraph 3 that Chaney and MacMillan resided at the Malibu beach-front compound ("Malibu Property") during their entire marriage. Respondent admits that for a period, Chaney and MacMillan were trustees of living trusts, and that title documents reflect the Malibu Property was held as tenants-in-common. However, and importantly, Sarah MacMillan maintained that the Malibu beach-front compound was purchased "entirely with Sarah's separate funds" and that Blaine Chaney accrued **no interest** in the Malibu beach-front compound. Respondent admits that at the time of the settlement agreement in January 2006, the Malibu Property had an estimated fair market value between $25 and $75 million, and states that the

Property was valued by Chaney at $50 million, as confirmed by Chaney in his court ordered deposition of August 22, 2012.

4. Responding to Paragraph 4 of the NDC, Respondent incorporates by reference his answers to Paragraph 3 above as if set forth in full herein.

5. Respondent admits the allegation in Paragraph 5 of the NDC.

6. Responding to Paragraph 6 of the NDC, Respondent incorporates by reference his answers to Paragraph 3 above as if set forth in full herein.

7. Respondent admits the allegation in Paragraph 7 of the NDC.

8. Respondent admits in part and denies in part the allegations contained in Paragraph 8 of the NDC. Respondent admits that on January 12, 2006, through his efforts, a settlement agreement was reached between Chaney, MacMillan and the trustees of the MacMillan family trusts, providing Chaney, among other things, a half interest in the multimillion dollar Malibu Property, a lump sum payment of $1.9 million, and monthly payments of $200,000 for two years (assets that he was not otherwise entitled to receive through his marriage), in consideration for, among other things, Chaney's release of any and all claims against MacMillan and any of the MacMillan family trusts and trustees. Respondent denies that the agreement was a marital settlement agreement. The agreement on its face was not entitled or referenced as a "marital settlement agreement."

Respondent admits that many of the provisions of the January 12, 2006 Settlement Agreement won by Grigg for Chaney – which was not a marital settlement agreement – were incorporated into the subsequent stipulated judgment filed in the Chaney dissolution action on March 2, 2006, since the earlier January 12, 2006 Settlement disposed of, *inter alia*, property issues between Chaney and MacMillan.

9. Responding to the allegations in Paragraph 9 of the NDC, Respondent admits that between August 2005 and in and about February 2006, he charged Chaney approximately $133,200 – not $113,200 – of which Chaney paid approximately $108,019, for legal services rendered under the hourly fee agreement, which included services related to Chaney's dissolution of marriage, as well as representation of Chaney in various financial and business related matters.

10. Respondent admits the allegations in Paragraph 10 of the NDC, and further states that prior to sending the January 3, 2006 letter to Chaney, Grigg and Chaney had discussed on multiple occasions the signing of a security agreement and the details thereof to secure payment for Grigg's legal fees pursuant to the contingency fee agreement. These multiple discussions are referenced in the first sentence of the January 3, 2006 letter. The purpose of Grigg's letter was to comply with the requirements of Rule 3-300 prior to actually entering into a security agreement with Chaney. Grigg did not provide a copy of the security agreement contemporaneously with the January 3, 2006 letter to Chaney, but Chaney was given the security agreement containing the full terms after he received the January 3, 2006 letter advising him of his right to seek independent counsel to discuss the terms of the security agreement. Grigg and Chaney discussed the terms of the security agreement on multiple occasions prior to executing the agreement, as the January 3, 2006 letter reflects, and they continued to collaborate throughout the month of January, 2006 to reach mutually acceptable terms and values of the assets that would be subject to the Security Agreement for Grigg's charging lien.

11. Respondent objects to the assertions in Paragraph 11 of the NDC on the ground that they are compound. Without waiving this objection, Respondent admits in part and denies in part the allegations contained in Paragraph 11. Respondent denies the characterization of the January, 2006 settlement agreement as a marital settlement agreement (MSA), as referenced in Paragraph 11. Respondent admits that on or about February 10, 2006, he provided Chaney with the security agreement signed by the parties, to review and to discuss, but denies that he "directed" Chaney to execute the security agreement. The Security Agreement provided Grigg with interest in Chaney's guitar collection, automobile collection, and studio equipment (collectively valued at $2,063,510), plus interest in Chaney's interest in the Malibu Property and option interest to purchase Shangri La Studios, all of which were assets obtained for Chaney by Grigg through Grigg's efforts in obtaining the Settlement Agreement for Chaney. Chaney was well aware of the terms of the Security Agreement, which he signed and also initialed on each and every page. Grigg did not have to advise Chaney with a separate additional writing advising of his right to seek independent legal counsel after the final Security Agreement was presented.

Respondent further states that the written document advising Chaney of his right to seek the advice of independent counsel existed as of January 3, 2006. Chaney confirmed he had received Grigg's January 3, 2006 letter during a conversation he later had with Grigg on January 6, 2006. Further, Grigg referred to the January 3, 2006 letter on a continuing basis in conjunction with a continuing admonition to Chaney, up until the signing of the Security Agreement that was reviewed, signed and initialed by Chaney on every page, that he had the right to seek the advice of independent counsel with respect to the Security Agreement. Moreover, the written notice had already been provided to Chaney a month earlier, and Chaney was under no pressure to sign the Security Agreement without having it first reviewed by independent counsel if he desired, of which fact Chaney was wholly aware.

Respondent asserts that the Security Agreement was not a separate transaction between Grigg and Chaney, but rather stemmed from the charging lien provision contained in the August 31, 2005 contingency fee agreement between Grigg and Chaney that provided an attorney lien on the proceeds obtained on behalf of Chaney in representing Chaney's claims, *inter alia*, against the MacMillan 1969 Trust to secure the payment of the 15% contingency fee. The Security Agreement expressly provided that Chaney's obligation under the Security Agreement arises from the Contingency Fee Agreement. The purpose of the Security Agreement was to identify the specific assets that were subject to Grigg's charging lien as provided for in the Contingency Fee Agreement. All of the assets listed as collateral in the Security Agreement were proceeds and property obtained through the settlement agreement won by Grigg on behalf of his client Chaney. Moreover, the Security Agreement was limited to Grigg's 15% contingency fee and did not involve the hourly fees which were the subject to a separate hourly fee agreement negotiated between Chaney and Grigg.

12. Respondent objects to the assertions in Paragraph 12 of the NDC which constitute a legal conclusion and, without waiving this objection, denies that he knowingly acquired an interest adverse to a client without complying with the requirements of rule 3-300. First, in the final arbitration award rendered in the underlying matter, Chaney's allegation that the Security Agreement was "void as against public policy and on the additional grounds of fraud" was rejected

by the arbitrator: the arbitrator ruled that this claim, along with others, was denied. In addition, as a matter of law, Grigg was not required to comply with Rule 3-300. (*See,* State Bar Formal Opinion No. 2006-170, which noted that the California Supreme Court holding in *Fletcher v. Davis* (2004) 33 Cal.4th 61 was limited to hourly fee agreements, and did not prohibit charging liens in contingency fee agreements. The opinion then discussed the issue of a security lien in a contingency fee case, and cited LACBA Formal Opinion No. 496 (1998) which noted that "A contingent fee coupled with a lien against the client's recovery in the same matter in which legal services are being provided has never been held to require compliance with the terms of rule 3-300." The opinion also discussed LACBA Formal Opinion No 416 (1983) which distinguishes between a charging lien that applies to funds the attorney will recover for the client, and other types of security interests (i.e. an subsequent attorney obtaining lien on proceeds obtained for the client by previous counsel.)

Respondent further asserts that his Security Agreement with Chaney was tied to the original valid charging lien contained in the 15% Contingency Fee Agreement, which agreement placed a lien on the proceeds obtained through the services Grigg provided pursuant to the Contingency Fee Agreement to secure payment of his contingency fee. Grigg was not required to comply with rule 3-300. However, as a precaution and in accordance with the provision of legal services of the highest quality and integrity, after having read Rule of Professional Conduct 3-300, Grigg sent Chaney a January 3, 2006 letter advising him of his intent to enter into a security agreement to secure payment of his contingency fee and to seek independent legal counsel.

COUNT TWO

13. Respondent objects to the allegation in Paragraph 13 which constitutes a legal conclusion and, without waiving this objection, denies that he committed acts in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

14. Responding to Paragraph 14 of the NDC, Respondent incorporates by reference his answers to Paragraph 2 - 12 above as if set forth in full herein.

15. Respondent admits in part and denies in part the allegations in Paragraph 15 of the NDC. Respondent admits that on February 27, 2006, Chaney signed two separate wire instructions,

which allowed the funds from the settlement with MacMillan, including a $2 million lump sum payment and $200,000 monthly payments to be transferred to Grigg's client trust account. Respondent denies that he "directed" Chaney to sign the wire instructions. Chaney favored this arrangement because Chaney's poor credit and substantial debt prevented him from opening a bank account, and by having the funds wired directly to Grigg's CTA, Chaney was able to direct the use of those funds for his benefit in addition to having a portion of the funds applied toward the contingency fee owed to Grigg. Respondent further states that a cover letter accompanied the wire instructions provided to Chaney that clearly advised Chaney that Grigg would be able to apply the funds received toward the outstanding legal fees owed to Grigg pursuant to the contingent hourly fee agreement. The following day, on February 28, 2006, Grigg sent Chaney a separate billing invoice for attorney fees related to the contingent fee legal services. Grigg continued to send Chaney regular monthly invoices through September, 2006. At no time during this period, prior to firing Grigg, did Chaney question or complain about Grigg's fees, bills, distributions, or accounting. To the contrary, Chaney orally and in writing praised Grigg for the quality services provided.

16. Respondent admits the allegation in Paragraph 16 of the NDC.

17. Respondent admits the allegation in Paragraph 17 of the NDC.

18. Responding to the allegations in Paragraphs 18 and 19 of the NDC, Respondent admits that on or about March 1, 2006, he received a wire transfer in the amount of $2.1 million from MacMillan for the benefit of Chaney into his CTA, and that between April and September of 2006 he received six monthly payments of $200,000, wired into his CTA for the benefit of Chaney. Respondent states that he provided Chaney with monthly account statements through September 2006 reflecting the receipt of the funds, as well as reflecting the portion of the funds that were applied to Grigg's legal fees each month. Respondent further states that Chaney was contemporaneously made aware of the receipt of the wired funds into Grigg's CTA because Chaney directed Grigg to distribute the funds each time the funds were received.

19. Responding to the allegations in Paragraph 20 of the NDC, Respondent lacks personal knowledge to admit or deny the allegation that Chaney retained attorney Joseph Yanny ("Yanny") after becoming concerned with Grigg's fees and handling of Chaney's money, and on

that ground, Respondent denies that allegation. Respondent states that at no time prior to retaining Yanny did Chaney once question or complain to Grigg about Grigg's fees, bills, distributions, or accounting. In fact, Chaney often praised Grigg for his efforts and his representation of Chaney in his various matters. Respondent admits that on or about September 6, 2006, Yanny on behalf of Chaney – but not Chaney directly – requested an accounting of the funds that Grigg had received and distributed as a result of the January, 2006 Settlement Agreement. Respondent denies that the funds received by Grigg for the benefit of Chaney were the result of the marital dissolution judgment. Respondent admits that through his legal counsel Douglas J. Rovens, Esq., of Zelle Hofmann, Voelbel, Mason & Gette, LLP, it was agreed that the client file material and all accounting documents to which Chaney was entitled would be provided, despite the fact that earlier, contemporaneous with the provision of services, invoices and client monthly accountings were provided to Chaney.

20. Responding to the allegations in Paragraphs 21 and 22 of the NDC, Respondent admits in part and denies in part the allegations contained therein. Respondent admits that on or about September 8 and September 11, 2006, Yanny sent letters to Grigg advising him of Chaney's termination of Grigg's services requesting an accounting of the funds received for the benefit of Chaney. Respondent admits that he received those two letters, but denies the allegation that he did not respond to Yanny's letters. Respondent asserts that on September 15, 2006, Grigg's counsel, Douglas J. Rovens ("Rovens"), sent a letter to Yanny, responding to Yanny's September 8 and 11, 2006 letters by stating that Grigg would provide an accounting and Chaney's files, but requested a written confirmation be provided by Chaney that Yanny was in fact retained as Chaney's new counsel. Yanny responded by requesting that Mr. Rovens call him to further discuss the matter.

Respondent states that he was reluctant to promptly comply with Yanny's request because at that time, Grigg was uncertain whether Yanny in fact represented Chaney. Respondent asserts that just weeks prior to Yanny's correspondence, Chaney had written a letter to another one of his attorney's with a copy to Grigg, which praised Grigg as a loyal and ethical counsel, and Grigg was providing legal services for Chaney and communicating with him as a client up until September 6, 2006. Respondent further states that his skepticism of Yanny's representation was further

supported by the fact that Yanny had contacted Grigg in late August, 2006 purportedly on behalf of Chaney, and stated that he was Chaney's friend, not legal counsel. Thus, Grigg had no reason to believe that Chaney was unsatisfied with his representation, so it came as a surprise to Grigg when Yanny advised him that he represented Chaney, that Chaney was terminating his services, and that Chaney requested an accounting.

21. Responding to the allegations in Paragraphs 23 and 24 of the NDC, Respondent admits in part and denies in part the allegations contained therein. Respondent admits that on or about September 13, 2006, Yanny sent another letter to Grigg demanding an accounting, and Respondent states that he received the letter after the September 15, 2006 response letter was sent to Yanny. Respondent denies that he did not respond to Yanny's September 13, 2006 letter. Respondents asserts that on September 21, 2006, Grigg's counsel, Rovens, (without having received any notice that Yanny had filed a lawsuit on September 18, 2006 on behalf of Chaney, seeking, among other things, an accounting) sent another letter to Yanny requesting written confirmation from Chaney that Chaney had in fact retained Yanny, so Grigg would be certain that he was providing Chaney's client files and an accounting to Chaney's attorney. Yanny did not provide any such confirmation. On September 26, 2006, Rovens advised Yanny that Chaney's files, which included an accounting, were ready for pick-up but reiterated his request for written confirmation from Chaney that Yanny was in fact retained as his attorney. Yanny refused to provide such a confirmation. After Rovens obtained a copy of the unserved complaint filed by Yanny on behalf of Chaney against Grigg, Rovens sent another letter to Yanny on September 27, 2006, again advising Yanny that the files were ready for pick-up, and that the files will be delivered to Yanny.

Respondent further states that On September 28 and 29, 2006, his counsel prepared the documents and accounting requested to be sent to Yanny's office. On October 2, 2006, Grigg produced the entire case file for Chaney to his counsel to forward to Yanny. Shortly thereafter, Grigg's counsel provided Yanny with Chaney's files, which included an accounting of the funds received for the benefit of Chaney. In addition, Grigg's counsel also sent Yanny the final billing for September, 2006.

22. Respondent admits the allegations in Paragraph 25 of the NDC.

23. Responding to the allegations in Paragraph 26 of the NDC, Respondent incorporates by reference his answer to Paragraph 26 above as if set forth in full herein, and denies that he has failed to provide a complete accounting of all funds received and disbursed on behalf of Chaney. Respondent asserts that in addition to having provided Chaney with contemporaneous accounting during the period of representation, and in addition to responding to Yanny's request for an accounting, on October 10, 2006, during the proceedings in the civil case initiated by Chaney, Grigg's counsel filed and served on Chaney's counsel the declarations of Ronald Grigg and forensic financial expert Jack Zuckerman, CPA, ABV, JD, ("Zuckerman") attesting to the accounting provided to Chaney. Attached as an exhibit to those declarations was the full set of invoices that had previously been sent to Chaney. Zuckerman attested to the fact that in his expert opinion the documents provided to Chaney accurately and completely accounted for all of the funds received and distributed by Grigg.

24. Respondent objects to the assertions in Paragraph 27 which constitute a legal conclusion and, without waiving this objection, denies that he failed to properly account to Chaney of all funds received for Chaney benefit.

COUNT THREE

25. Respondent objects to the allegation in Paragraph 28 which constitutes a legal conclusion and, without waiving this objection, denies that he committed acts in willful violation of Business and Professions Code, section 6068(b).

26. Responding to Paragraph 29 of the NDC, Respondent incorporates by reference his answers to Paragraphs 2 - 27 above as if set forth in full herein.

27. Responding to the assertions in Paragraph 30 of the NDC, Respondent states that on November 13, 2007, arbitrator Gregory O'Brien (the "Arbitrator") issued a revised interim arbitration award, which was followed by a final arbitration award on November 20, 2008, which set forth that other than a claim for unjust enrichment "[a]ll other claims of Respondent [Chaney] are denied." Respondent further states that prior to the arbitration, in November, 2006, after having read Grigg's reply and the accompanying expert declarations, the Honorable Aurelio Munoz ruled

that the Contingency Agreement was valid, a ruling that was later reaffirmed on January 30, 2007, when Judge Munoz denied Chaney's motion for reconsideration of the court's order, and reemphasized that "the court found the agreement to be valid." (Emphasis added.) Chaney failed to prevail in the arbitration he asserts is controlling with respect to his claims for: Breach of Fiduciary Duty; Conversion; Accounting; Fraud and Deceit; Imposition of a Constructive Trust; Declaratory Relief; Legal Malpractice; Breach of Contract; For Money Had and Received; and Injunctive Relief.

28. Respondent admits the allegation in Paragraph 31 of the NDC, and states that the Los Angeles Superior Court ("LASC") acted to confirm the Arbitrator's final award of November 20, 2008, thereby confirming solely Chaney's claim of unjust enrichment (and restitution thereon). The LASC at the same time confirmed the denial of all other claims by Chaney, including but not limited to injunctive and accounting relief.

29. Responding to the allegations in Paragraph 32 of the NDC, Respondent admits that on March 1, 2010, a judgment was entered in *Chaney v. Grigg*, confirming the *final* arbitration award granting restitution to Chaney, and asserts that the judgment confirming the final arbitration award did not grant injunctive or accounting relief. Respondent states that on April 16, 2010, he appealed the Superior Court's action confirming the Arbitrator's Final Award. Later, on July 2, 2010, Grigg appealed the injunction relevant to these proceedings.

30. Respondent admits the allegations in Paragraph 33 of the NDC, and asserts that the Final Arbitration Award granted Chaney restitution based on his claim of unjust enrichment, but all other claims, including injunctive relief and accounting, were denied. Chaney's counsel, Yanny, disregarded Grigg's appeal of the court's confirmation of the Arbitration Award and unlawfully petitioned in Los Angeles Superior Court for a permanent injunction, and misrepresented the history of Chaney's application for injunctive and accounting relief against Grigg, failing to advise the court that the Final Arbitration Award did not grant Chaney's request for accounting or injunctive relief. The Los Angeles Superior Court, at Chaney's urging, essentially went beyond its authority and in effect modified the arbitrator's award, despite the procedural fact that the arbitrator had earlier determined not to issue an injunction or accounting relief. The Los Angeles Superior Court

had no power to modify the arbitrator's award. *See*, *Swan Magnetics, Inc. v. Sup. Ct.* (1977) 56 Cal.App.4th 1504, 1512 (affirmed in *Wade v. Schrader* (2008) 168 Cal.App.4th 1039), in which the court held that only the arbitrator had jurisdiction to modify its ruling relating to the injunction. The court in *Swan Magnetics, Inc.* observed that obviously, modification of the arbitrator's ruling relating to the injunction affects the substance of the arbitrator's original ruling and defeats the parties' contractual expectation of a decision according to the arbitrator's best judgment.

31. Responding to the allegations in Paragraph 34 of the NDC, Respondent admits that on June 2, 2010, a Corrected Permanent Injunction (the "June Injunction") was issued, setting forth that Grigg was enjoined from using the disputed funds, ordering Grigg to return the previously distributed legal fees to Chaney, and as a result of Yanny's inaccurate description of the Final Arbitration Award, the contradictory language re: "accounting" for the "present whereabouts of the funds" was included in the June 2, 2010 Injunction. Respondent states that also issued on June 2, 2010 was a Corrected Turnover Order ("Turnover Order"), ordering Grigg to pay to Chaney the funds received by Grigg in the Chaney matter. In signing both the June Injunction and the Turnover Order, Judge Michael L. Stern specifically struck from the proposed orders the paragraph that read: "Failure to comply with this Court order may subject [Grigg] to arrest and punishment for contempt of court[.]" The striking of that language prevented a finding of contempt for noncompliance. Cal. Code Civ. Proc. § 699.040(c) requires the presence of language that failure to comply may subject the judgment debtor to arrest and punishment for contempt of court and also mandated personal service. Respondent further asserts that he was never personally served, as required by Cal. Code Civ. Proc. § 699.040(c), with respect to the errant May 7, 2010 Permanent Injunction or the purported "Corrected" Permanent Injunction dated June 2, 2010 before the unlawful contempt proceedings later fomented by Chaney were sought.

32. Respond admits the allegations contained in Paragraph 35 of the NDC, except that he denies the characterization of the Los Angeles Superior Court case as "the breach of fiduciary duty case" because the court's judgment affirmed the Final Arbitration Award specifically denied Chaney's claim for breach of fiduciary duty. Respondent further denies that he was present at all of the hearings for the order to show cause re contempt proceedings. Mr. Grigg was not present for a

December 7, 2011 hearing date when Chaney's counsel urged Judge Ongkeko to act despite Grigg's filing for federal bankruptcy protection on December 5, 2011. Respondent further asserts that following the court's June 2, 2010 orders, Grigg timely appealed the Injunction on July 2, 2010. Grigg had consulted with his appellate counsel, Benjamin Shatz, who was then the Chair of the California State Bar Committee on Appellate Courts, who advised Grigg, *inter alia*, that the Injunction was stayed pending appeal. Grigg also relied on established case law that mandatory injunctive relief is automatically stayed on appeal. (*See Kettenhofen v. Superior Court* (1961) 55 Ca.2d 189, 191; *Paramount Pictures Corp. v. Davis* (1964) 228 Cal.App.2d 827, 835; *Dewey v. Superior Court* (1889) 81 Cal. 64, 67-68.) Grigg's reliance on his counsel's advice was reaffirmed in a June 8, 2011 hearing in *Chaney v. Grigg*, where Judge Michael P. Linfield discussed the Injunction and advised the parties that the case was under appeal, so everything was stayed under CCP 916(A), and that the court had no jurisdiction over anything concerning the judgment. Therefore, Grigg reasonably relied upon the view that the injunction was stayed.

33. Respondent admits the assertions in Paragraph 36 of the NDC, except that he denies the characterization of the Los Angeles Superior Court case as "the breach of fiduciary duty case" because the court's affirmation, upon Chaney's petition for confirmation of the Final Arbitration Award dated November 20, 2008, specifically denied Chaney's claim for breach of fiduciary duty. Grigg asserts that Judge Ongkeko's October 25, 2011 order only referenced a violation of paragraphs 7, 8 and the second half of paragraph 10, of a single order: the June 2, 2010 "Corrected" Permanent Injunction.

Respondent further asserts that Judge Ongkeko's October 25, 2011 order finding Respondent in contempt was a result of Chaney having moved for contempt, notwithstanding Judge Linfield's ruling that the June 2, 2010 order was stayed unenforceable pending appeal. Judge Ongkeko found Grigg in contempt despite having acknowledged during the contempt proceeding on September 16, 2011, that in the June 2, 2010 order the language that would have subjected Grigg to contempt and punishment if Grigg did not comply with the order was specifically crossed out, and Judge Ongkeko further acknowledged that crossing out something on an order generally meant it was specifically rejected.

Respondent states that based upon the law that Judge Ongkeko's subsequent actions were contrary to Judge Linfield's prior jurisdictional ruling (and the earlier denial of accounting and injunctive relief by the arbitrator), the October 25, 2011 order re contempt was without legal support and wholly without jurisdiction. California state contempt proceedings are stayed by the filing of a bankruptcy petition, unless the contempt relates to a "public purpose." See, e.g., 11 U.S.C. § 362(a); *Keitel v. Heubel* (2002) 103 Cal.App.4th 324, 333-334; *In re Musaelian* (Bankr. N.D. Cal. 2002) 286 B.R. 781, 782; U.S. Const. Art. VI, Cl. 2. "State courts lack the power to issue valid orders or rulings limiting the automatic stay." *In re Gruntz* (9th Cir. 2000) 202 F.3d 1074, 1082.

34. Respondent objects to the assertions in Paragraph 37 of the NDC which constitutes a legal conclusion and, without waiving this objection, denies that he violated any validly issued court order that was not subject to stay pending resolution of appeal. Respondent incorporates by reference his answers to Paragraph 28-36 above as if set forth in full herein, and further states that Grigg, through his legal counsel, upon learning that Judge Ongkeko upon the urging of Chaney's lawyers had determined to act in contravention of Judge Michael P. Linfield's prior jurisdictional ruling of June 8, 2011, presented a day and a half of testimony to the court, including financial expert, Coral Hanson, CBIZ MHM, LLC and Grigg's prior bookkeeper Mary H. Whitman, evidence that fully accounted to the court for the receipt and the distribution of all funds. The transcripts in the underlying proceeding reflect that a full accounting was provided to the court in connection with the contempt proceeding.

35. Respondent admits the allegations in Paragraph 38 of the NDC, except that he denies the characterization of the Los Angeles Superior Court case as "the breach of fiduciary duty case" because the Los Angeles Superior Court acted, at Chaney's urging, to confirm the final arbitration award, which specifically denied, *inter alia*, Chaney's claim for breach of fiduciary duty.

36. Responding to the allegations in Paragraph 39 of the NDC, Respondent states that he fulfilled his jail time pursuant to Judge Ongkeko's January 10, 2012 order, and admits that he did

not pay the fees and costs pursuant to the order because of the pending bankruptcy proceeding and lack of funds.[1]

37. Respondent objects to the assertions in Paragraph 40 which constitute a legal conclusion and, without waiving this objection, denies that he failed to maintain the respect due to the courts of justice and judicial officers.

COUNT FOUR

38. Respondent objects to the allegation in Paragraph 41 which constitutes a legal conclusion and, without waiving this objection, denies that he committed acts involving moral turpitude, dishonesty or corruption.

39. Responding to Paragraph 42 of the NDC, Respondent incorporates by reference his answers to Paragraphs 2 - 40 above as if set forth in full herein.

40. Respondent objects to the allegation in Paragraph 43 which constitutes a legal conclusion and, without waiving this objection, denies that he acted in bad faith in not complying with the court's June 2, 2010 and January 10, 2012 orders. "[N]oncompliance [with a court order] involves moral turpitude for disciplinary purposes only if the attorney acted in either 'objective' or 'subjective' bad faith. 'Bad faith' is established if (1) no plausible ground for noncompliance existed, or (2) the attorney did not believe he had plausible grounds for noncompliance, even if such grounds arguably existed. (Cf., *Flaherty, supra*, at pp. 649-650.) The burden of establishing moral turpitude 'by convincing proof and to a reasonable certainty' rests with the State Bar." (*Maltaman v. The State Bar of California* (1987) 43 Cal.3d 924.) Respondent incorporates by reference his answers to Paragraphs 28 - 40 above as if set forth in full herein, and further states. Respondent asserts that he certainly acted in good faith by relying on his professional interpretation of applicable law, by relying on the advice of competent legal counsel, by relying on the court's earlier ruling that the June 2, 2010 order was stayed and therefore unenforceable, and by relying on the

[1] Grigg's filing for Chapter 7 bankruptcy in Pennsylvania on December 5, 2011, placed an automatic stay on all collection efforts pertaining to Grigg's assets and placed Grigg's assets under the control of the federal court for the Western District of Pennsylvania (Case No. 11-71206).

bankruptcy court's automatic stay associated with Grigg's filing for bankruptcy protection on December 5, 2011, which thereby stayed collection efforts against Grigg.

41. Respondent objects to the assertions in Paragraph 44 which constitute a legal conclusion and, without waiving this objection, denies that he committed acts involving moral turpitude because he did not act in bad faith in not complying with the court's orders.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State Sufficient Facts)

The Notice of Disciplinary Charges, and each of its purported counts, fails to state facts sufficient to state a basis for discipline.

SECOND AFFIRMATIVE DEFENSE

(Duplicative Charges)

The Notice of Disciplinary Charges contains inappropriate, unnecessary, and immaterial duplicative charges. *Bates v. State Bar* (1990) 51 Cal.3rd 1056, 1060; *In the Matter of Lilley* (Rev. Dept. 1991) 1 Cal. SB Ct. Rptr. 476, 585.

THIRD AFFIRMATIVE DEFENSE

(Good Faith Reliance Upon the Law)

All of Respondent's admitted conduct was done in reliance upon well-established laws and legal principles, upon which, Respondent had the legal right to rely in conducting his affairs. Grigg's noncompliance with the court's order re accounting was based on his good faith reliance upon the law, the advice of his appellate counsel, and earlier court rulings. A contempt citation is not an automatic ground for discipline. In *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, the Court held that "[t]he mere fact that an attorney has been held in contempt is not grounds for discipline. [citing *Maltaman v. The State Bar of California*, supra, at 953.]

Maltaman held "[n]o attorney should be sanctioned simply for acting in good faith on a plausible claim of right..." and that a violation of duty will be found "only if the attorney acted in either 'objective' or 'subjective' bad faith." *Maltaman, supra*, at pp. 950-951. Here, Grigg acted on his good faith belief that paragraphs 7, 8 and the last half of paragraph 10 from the June 2, 2010 "Corrected" Permanent Injunction were stayed and not enforceable.

FOURTH AFFIRMATIVE DEFENSE

(Advice of Counsel)

Respondent consulted with his former appellate attorney, who fully knew all of the pertinent facts, and thereupon his appellate attorney advised Respondent that the injunction was stayed pending resolution of appeal. Thereafter, and in good faith reliance on the advice of that attorney, Respondent concluded that the Permanent Injunctive Order was stayed and unenforceable against him while the issue was pending in the appellate court, and did not comply with the order to provide specific accounting to Chaney, which is the basis of Counts Three and Four of the NDC.

FIFTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

The facts alleged in Counts One and Two of the Notice of Disciplinary Charges establish on the face of the NDC that the action is barred by the period of limitations contained in Rule 5.21 of the Rules of Procedure of the State Bar of California, which provides that a disciplinary proceeding based solely on a complainant's allegations of a disciplinary violation must begin within five years from the date of the violation. *See* Rule 5.21(A).

According to Count One of the NDC, the alleged violation of rule 3-300 is based on the security agreement entered into between Grigg and Chaney on February 10, 2006. (NDC ¶10.) Grigg's representation of Chaney concluded in September of 2006 when Chaney hired Yanny and advised Grigg that his services had been terminated. (NDC ¶23.) The Arbitrator's revised interim award in the underlying civil dispute between Grigg and Chaney, which the State Bar asserts is

controlling, was issued November 13, 2007. (NDC ¶30.) These all occurred well over five years from the date of the commencement of this proceeding.

According to Count Two of the NDC, the alleged violation of rule 4-100(B)(3) is based on the Grigg's alleged failure to respond to Chaney's request for accounting in September, 2006 when Chaney terminated Grigg's services. (NDC ¶¶ 20-23.) Grigg's representation of Chaney concluded in September of 2006 when Chaney hired Yanny and advised Grigg that his services had been terminated. (NDC ¶23.) The Arbitrator's revised interim award in the underlying civil dispute between Grigg and Chaney, which the State Bar asserts is controlling, was issued November 13, 2007. (NDC ¶30.) This action was not filed until September, 2013, over five years after the purported misconduct and over five years since the issue of accounting was put to rest by the Arbitrator in the underlying civil dispute, when he specifically denied Chaney's claims for accounting and injunctive relief.

SIXTH AFFIRMATIVE DEFENSE

(Unreasonable Delay)

The State Bar has unreasonably delayed in its filing of Counts One and Two of the NDC, on which Respondent has relied to his prejudice and detriment. The charges contained in Counts One and Two of the NDC are stale, and there is an irrebutable presumption of unfairness to Respondent arising from this unreasonable delay. The law has long recognized that extended delay is highly prejudicial to a litigant. Memories fade. Witnesses disappear. Documents are destroyed or misplaced. There are "all the impediments the statute of limitations was designed to avoid." *Chase Securities Corp. v. Donaldson* (1945) 325 U.S. 304, 314.

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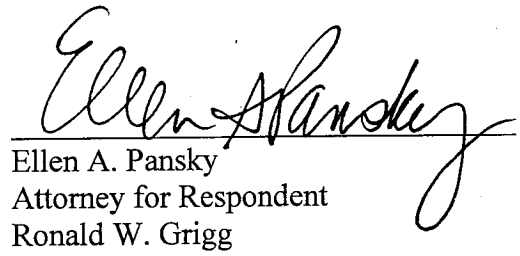
WHEREFORE, Respondent prays that the Court find that Respondent did not commit acts constituting professional misconduct, and that the Notice of Disciplinary Charges be dismissed.

Respectfully submitted,

PANSKY MARKLE HAM, LLP

Dated: October 8, 2013

By: 

Ellen A. Pansky
Attorney for Respondent
Ronald W. Grigg

PROOF OF SERVICE

In the Matter of Ronald W. Grigg

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 1010 Sycamore Ave., Suite 308, South Pasadena, California 91030.

On **October 8, 2013,** I served the foregoing document(s) described as:

RESPONSE TO NOTICE OF DISCIPLINARY CHARGES

on all interested parties in this action by placing a true copy of each document, enclosed in a sealed envelope addressed as follows:

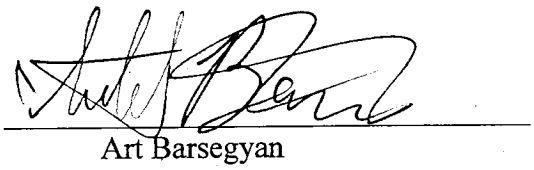
Kimberly Anderson, Senior Trial Counsel
Office of the Chief Trial Counsel
Enforcement
The State Bar of California
1149 South Hill Street
Los Angeles, CA 90015-2299

Fax: (213) 765-1383

(X) **BY MAIL:** as follows: I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at South Pasadena, California.

(X) **BY E-MAIL:** On October 8, 2013, I transmitted the above-referenced documents via electronic mail to the following e-mail address: Kimberly.Anderson@calbar.ca.gov

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed October 8, 2013, at South Pasadena, California.



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