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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>DISBARMENT</b>			<b>PUBLIC MATTER</b>
<p>Counsel For The State Bar</p> <p>Erin McKeown Joyce Deputy Trial Counsel State Bar of California 1149 South Hill Street Los Angeles, CA 90015-2299 Telephone: (213) 765-1356 Facsimile: (213) 765-1319</p> <p>Bar # 149946</p>	<p>Case Number(s):</p> <p>11-O-13837-RAH 11-O-18137-RAH 12-N-11126-RAH 12-O-13026-RAH 12-O-14231-RAH 12-O-15351-RAH</p>	<p>For Court use only</p> <div style="text-align: center;"> <p><b>FILED</b></p> <p><b>DEC 11 2012</b></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> </div> <div style="text-align: center; margin-top: 20px;"> <p>kwiktag® 152 143 738</p>  </div>	
<p>In Pro Per Respondent</p> <p>Gary D. Olive 2319 S. Rimpau, Apt. 1 Los Angeles, CA 90016 Telephone: (323) 377-9852</p> <p>Bar # 176748</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p><b>DISBARMENT</b></p> <p><input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>		
<p>In the Matter of:</p> <p><b>GARY D. OLIVE</b></p> <p>Bar # 176748</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 June 12, 1995.
- (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 (17) pages, not including the order.

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- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs to be awarded to the State Bar.
  - 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 [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline**
- (a)  State Bar Court case # of prior case nos. 07-O-11228, et al. See the Attachment to the Stipulation re Facts, Conclusions of Law and Disposition at page 11.
  - (b)  Date prior discipline effective September 14, 2011
  - (c)  Rules of Professional Conduct/ State Bar Act violations: See the Attachment to the Stipulation re Facts, Conclusions of Law and Disposition at pages 11 through 13.
  - (d)  Degree of prior discipline two years' actual suspension and until Respondent pays restitution, three years stayed suspension and a four-year probation, with conditions.
  - (e)  If respondent has two or more incidents of prior discipline, use space provided below:
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

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- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See the Attachment to the Stipulation re Facts, Conclusions of Law and Disposition at page 13.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See the Attachment to the Stipulation re Facts, Conclusions of Law and Disposition at page 13.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. 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 deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

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- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**D. Discipline: Disbarment.**

**E. Additional Requirements:**

- (1) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (2)  **Restitution:** Respondent must make restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_. If the Client Security Fund has reimbursed \_\_\_\_\_ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than \_\_\_\_\_ days from the effective date of the Supreme Court order in this case.
- (3)  **Other:** Restitution is set forth on page 15 of the Attachment to Stipulation re Facts, Conclusions of Law and Disposition.

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

IN THE MATTER OF:        Gary D. Olive

CASE NUMBERS:            11-O-13837, 11-O-18137, 12-N-11126, 12-O-13026,  
   12-O-14231, 12-O-15351

**FACTS AND CONCLUSIONS OF LAW**

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

Case No. 11-O-13837 – The Munoz Matter

**FACTS:**

1.        On March 4, 2003, the U.S. Department of Justice, Board of Immigration (“BIA”), denied the applications for cancellation of removal filed by Juan Carlos Ramirez Munoz and his wife, Maria Beatriz Adriana Francia Alvarez, in the matter titled *In the Matter of Juan Carlos Ramirez Munoz and Maria Francia Alvarez*, BIA Case No. A075-759-498-499 (“the Munoz legal matter”).
2.        On April 2, 2004, the BIA affirmed the denial.
3.        On November 29, 2006, the Munozes went to Respondent’s office to discuss filing a motion to reopen the Munoz legal matter to apply for asylum. After discussing the matter with a member of Respondent’s staff, the Munozes agreed to hire Respondent for the Munoz legal matter.
4.        Under the attorney-client agreement with Respondent, the Munozes agreed to pay Respondent \$3,500, which could be paid in installments. The Munozes signed the attorney-client agreement and paid \$1,500 to Respondent on November 29, 2006.
5.        On February 22, 2007, the Munozes paid an installment of \$300 to Respondent’s office and received a receipt.
6.        On October 30, 2008, the Munozes paid an installment of \$350 to Respondent’s office and received a receipt. Altogether, the Munozes paid \$2,150 to Respondent.
7.        In November 2008, Respondent prepared and filed a motion to reopen to apply for asylum for both Munoz and Alvarez, withholding of removal (“motion to reopen”) in the Munoz legal matter, signed by Munoz and Alvarez, ostensibly *in propria persona*.
8.        On March 30, 2009, the BIA denied the motion to reopen, in part because motions to reopen must be filed within 90 days pursuant to 8 Code of Federal Regulations section 1003.2(c)(2) and the BIA had denied the Munozes’ applications for cancellation of removal on or about March 4, 2003, which was affirmed by the BIA on April 2, 2004.

9. At the time Respondent filed the *pro per* motion to reopen on behalf of the Munozes in the Munoz legal matter, Respondent knew that the motion was untimely and would be denied.

10. Respondent provided no legal services of any value to the Munozes. Respondent did not earn any of the advance attorney fees paid by the Munozes.

11. At no time did Respondent refund any portion of the \$2,150 paid to Respondent by the Munozes.

12. On August 12, 2011 and August 26, 2011, a State Bar Investigator mailed letters to Respondent at his official member records address requesting that Respondent respond in writing to the complaint filed by the Munozes concerning Respondent's representation in the Munoz legal matter. Respondent received the letters.

13. On October 5, 2011, Respondent faxed a letter to the Investigator that requested an extension of time to respond until October 31, 2011.

14. On October 6, 2011, the Investigator mailed a letter to Respondent at his official member records address granting the requested extension of time to respond until October 31, 2011.

15. Respondent received the Investigator's letter of October 6, 2011, but never provided a response to the letters dated August 12 and 26, 2011, or otherwise communicated with the Investigator.

#### CONCLUSIONS OF LAW:

16. By agreeing to represent the Munozes, and then filing a late and meritless motion on behalf of the Munozes as a *pro per* motion to reopen, Respondent failed to perform legal services with competence in wilful violation of Rule of Professional Conduct 3-110(A).

17. By failing to refund \$2,150 to the Munozes which Respondent had not earned, after his employment was terminated in 2009, Respondent failed to promptly refund unearned fees in wilful violation of Rule of Professional Conduct 3-700(D)(2).

18. By failing to respond to the State Bar Investigator's letters of August 12, 2011 and August 26, 2011, Respondent failed to cooperate with the State Bar's investigation in wilful violation of Business and Professions Code section 6068(i).

#### Case No. 11-O-18137 – Unauthorized Practice of Law Matter

#### FACTS:

19. On August 15, 2011, the California Supreme Court issued an order in case number S193619 ("the Supreme Court Order"). Pursuant to the Supreme Court Order, Respondent was actually suspended from the practice of law for a minimum of two years, and until he paid a series of restitution payments and provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to Standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

20. On August 15, 2011, the Clerk of the Supreme Court of the State of California properly served Respondent with the Supreme Court Order. Respondent received the Supreme Court Order.

21. The Supreme Court Order became effective on September 14, 2011, thirty days after the Supreme Court Order was filed.

22. Pursuant to the Supreme Court Order, Respondent was actually suspended starting on September 14, 2011, and remains on actual suspension at the time of the filing of this stipulation.

23. On September 22, 2011, Respondent filed a Chapter 7 Bankruptcy petition in the Central District of California on behalf of Francis Dimaandal, case no. 8:11-BK-23312CB ("the Chapter 7 matter").

#### CONCLUSIONS OF LAW:

24. By filing the Chapter 7 Bankruptcy petition on behalf of Dimaandal, Respondent practiced law when he was not an active member of the State Bar in wilful violation of Business and Professions Code sections 6125 and 6126, and thereby failed to support the laws of the State of California in wilful violation of Business and Professions Code section 6068(a).

#### Case No. 12-N-11126 – 9.20 Violation Matter

#### FACTS:

25. Paragraphs 19 through 22 are incorporated herein by reference in their entirety.

26. Respondent was ordered to comply with subdivisions (a) or (b) of Rule 9.20 of the California Rules of Court no later than October 14, 2011, and was ordered to comply with subdivision (c) of Rule 9.20 no later than October 24, 2011.

27. On December 20, 2011, Respondent filed an untimely and deficient declaration of compliance with Rule 9.20.

28. The Office of Probation notified Respondent that his December 20, 2011 declaration was rejected and that he was required to submit a declaration in full compliance with Rule 9.20.

29. On March 2, 2012, Respondent filed a second declaration of compliance with Rule 9.20, which was also deficient and rejected by the Office of Probation.

30. On March 12, 2012, Respondent belatedly filed a third declaration which complied with the requirements of Rule 9.20, which was accepted by the Office of Probation.

#### CONCLUSIONS OF LAW:

31. By failing to timely file a declaration of compliance with Rule 9.20 in conformity with the requirements of Rule 9.20(c) by October 24, 2011, Respondent wilfully violated Rule 9.20 of the California Rules of Court.



Case No. 12-O-13026 – Probation Violation Matter

FACTS:

32. Paragraphs 19 through 22 are incorporated herein by reference in their entirety.
33. Pursuant to the Supreme Court Order, Respondent was also placed on four years' probation, with conditions.
34. Respondent was required to submit quarterly reports the State Bar's Office of Probation commencing on January 10, 2012, each quarter of his probation.
35. As a condition of his probation, Respondent was required to submit proof of attendance and completion of Ethics School by September 14, 2012.
36. As a condition of his probation, Respondent was required to submit proof of attendance and completion of Client Trust Accounting School by September 14, 2012.
37. Respondent failed to timely file his quarterly reports due by January 10, 2012, April 10, 2012, and October 10, 2012.
38. Respondent has belatedly complied with the requirement to file the January 10, 2012 and April 10, 2012 quarterly reports.
39. Respondent has not filed his October 10, 2012 quarterly report to date.
40. Respondent failed to submit proof of attendance and completion of Ethics School by September 14, 2012.
41. Respondent failed to submit proof of attendance and completion of Client Trust Accounting School by September 14, 2012.

CONCLUSIONS OF LAW:

42. By failing to timely comply with his quarterly reporting conditions, failing to submit proof of attendance and completion of Ethics School, and failing to submit proof of attendance and completion of Client Trust Accounting School, Respondent failed to comply with all conditions attached to a disciplinary probation in wilful violation of Business and Professions Code section 6068(k).

Case No. 12-O-14231 – The Lemus Matter

FACTS:

43. On March 7, 2009, Gonzalo Lemus hired Respondent through his law firm Aqua Strategic Solutions, LLC for loan modification services (the "Lemus legal matter"). Lemus paid Respondent \$2,800 in advanced attorney's fees.
44. In April 2009, Lemus received letters from Respondent's law office requesting documents that Lemus had previously provided multiple times in person.

45. In July 2009, Lemus directly contacted his lender and was notified that Respondent had never contacted Lemus' lender. Lemus terminated Respondent's employment and requested a refund of advanced attorney fees.

46. On November 6, 2009, Lemus filed a small claims matter (case no. ELA 09S01555) against Respondent to collect the unearned advanced fees paid to Respondent.

47. On July 27, 2010, at trial in the Lemus' small claims matter, Lemus was awarded a judgment of \$1,450 against Respondent for unearned attorney's fees.

48. To date, Respondent has not paid any portion of the \$1,450 unearned advanced attorney's fees to Lemus.

49. The small claims judgment is final.

#### CONCLUSIONS OF LAW:

50. By failing to refund any portion of the \$1,450 unearned advanced attorney's fees to Lemus since entry of the judgment on July 27, 2010, Respondent wilfully failed to refund promptly any part of a fee paid in advance that has not been earned in wilful violation of Rule of Professional Conduct 3-700(D)(2).

#### Case No. 12-O-15351 – The Wendam Matter

#### FACTS:

51. Paragraphs 19 through 22 are incorporated herein by reference in their entirety.

52. On June 22, 2011, Elsa Wendam hired Respondent dba Real Estate Litigation Group to file a complaint in Los Angeles County Superior Court related to a property owned by Wendam.

53. On October 6, 2011, Respondent filed a complaint in Los Angeles County Superior Court, entitled *Wendam v. Fidelity National Title Company*, case no. TC025748, on behalf of Wendam.

#### CONCLUSIONS OF LAW:

54. By filing a complaint on October 6, 2011 on behalf of Wendam in Los Angeles County Superior Court while Respondent was suspended from the practice of law, Respondent practiced law when he was not an active member of the State Bar in wilful violation of Business and Professions Code sections 6125 and 6126, and thereby failed to support the laws of the State of California in wilful violation of Business and Professions Code section 6068(a).

## **AGGRAVATING CIRCUMSTANCES**

### **Prior Record of Discipline**

Respondent has one prior imposition of discipline in Supreme Court case no. S193619. The Order was effective September 14, 2011 and Respondent was placed on two years' actual suspension, and until Respondent pays restitution. (Standard 1.2(b)(i)).

The first imposition of discipline was in State Bar Case Nos. 07-O-11228, 07-O-13029, 07-O-13798, 07-O-14124, 09-O-13834, 09-O-17409, 09-O-17785, 09-O-18921, 09-O-19174, 10-O-00081, 10-O-00088, 10-O-00336, 10-O-00927, 10-O-02451, 10-O-04053, 10-O-04078, 10-O-04083, 10-O-4092, 10-O-04405, 10-O-04832, 10-O-04838, 10-O-04840, 10-O-05609, 10-O-05611 and 10-O-08697.

In case no. 07-O-11228, Respondent misused his client trust account by issuing checks to pay personal and business expenses (Rule of Professional Conduct 4-100(A)).

In case no. 07-O-13029, Respondent was hired to prepare and file a petition for a writ of habeas corpus and failed to keep the client informed of the status of the petition (Business and Professions Code section 6068(m)).

In case no. 07-O-13798, Respondent was hired to renegotiate the balance owed on a loan and was paid \$2,500 in advanced legal fees. Subsequently Respondent failed to advise the client that he would not be providing any additional legal services on the client's behalf (Rule of Professional Conduct 3-700(A)(2)), and did not refund any portion of the advanced fees to the client (Rule of Professional Conduct 3-700(D)(2)).

In case no. 07-O-14124, Respondent was hired to represent a client in a criminal trial and his representation ended at the conclusion of trial. Respondent failed to return the client's file until approximately five months after the State Bar contacted Respondent about the client's complaint (Rule of Professional Conduct 3-700(D)(2)).

In case no. 09-O-13834, Respondent was hired to obtain a home mortgage loan modification for a client, the client paid Respondent \$2,495 in advanced legal fees. Respondent did not perform any legal services of value (Rule of Professional Conduct 3-110(A)), did not return the balance of unearned fees to the client (Rule of Professional Conduct 3-700(D)(2)), and did not release any of the client's files to the client (Rule of Professional Conduct 3-700(D)(1)).

In case no. 09-O-17409, Respondent was hired to obtain a home mortgage loan modification for a client. The client paid Respondent \$2,495 in advanced legal fees, which Respondent shared with a non-attorney (Rule of Professional Conduct 1-320). Respondent failed to take any action to obtain a loan modification on the client's behalf (Rule of Professional Conduct 3-110(A)), failed to respond to client's inquiries (Business and Professions Code section 6068(m)), and failed to refund any portion of the unearned fees to the client (Rule of Professional Conduct 3-700(D)(2)).

In case no. 09-O-17785, Respondent was hired to file a bankruptcy petition and client paid \$2,500 in advanced legal fees. Respondent shared these fees with a non-attorney (Rule of Professional Conduct 1-320). Thereafter Respondent failed to file a bankruptcy petition or take any other legal action on the

client's behalf (Rule of Professional Conduct 3-110(A)). After the client demanded a refund, Respondent did not promptly refund the unearned advanced fees (Rule of Professional Conduct 3-700(D)(2)).

In case no. 09-O-18921, Respondent was hired was to obtain a home mortgage loan modification for a client. The client paid Respondent \$2,495 in advanced legal fees, which Respondent shared with a non-attorney (Rule of Professional Conduct 1-320). Respondent failed to take any action to obtain a loan modification on the client's behalf (Rule of Professional Conduct 3-110(A)), and failed to refund any portion of the unearned fees to the client (Rule of Professional Conduct 3-700(D)(2)).

In case no. 09-O-19174, Respondent was hired was to obtain a home mortgage loan modification for a client. The client paid Respondent \$2,495 in advanced legal fees, which Respondent shared with a non-attorney (Rule of Professional Conduct 1-320). Respondent failed to take any action to request or negotiate a loan modification on the client's behalf (Rule of Professional Conduct 3-110(A)), and failed to refund any portion of the unearned fees to the client (Rule of Professional Conduct 3-700(D)(2)).

In case no. 10-O-00336, Respondent was hired was to obtain a home mortgage loan modification for a client. The client paid Respondent \$2,495 in advanced legal fees, which Respondent shared with a non-attorney (Rule of Professional Conduct 1-320). Respondent failed to take any action to obtain a loan modification on the client's behalf (Rule of Professional Conduct 3-110(A)), and failed to refund any portion of the unearned fees to the client (Rule of Professional Conduct 3-700(D)(2)).

In case no. 10-O-00927, Respondent was hired was to obtain a home mortgage loan modification for a client. The client paid Respondent \$2,495 in advanced legal fees, which Respondent shared with a non-attorney (Rule of Professional Conduct 1-320). The advanced legal fees were charged and received after October 11, 2009 in violation of California Civil Code section 2944.7(a)(1) (Business and Professions Code section 6106.3). Respondent failed to take any action to obtain a loan modification on the client's behalf (Rule of Professional Conduct 3-110(A)), and failed to refund any portion of the unearned fees to the client (Rule of Professional Conduct 3-700(D)(2)).

In case no. 10-O-02451, Respondent was hired was to obtain a home mortgage loan modification for a client. The client paid Respondent \$2,495 in advanced legal fees. Respondent failed to take any action to obtain a loan modification on the client's behalf (Rule of Professional Conduct 3-110(A)), and failed to refund any portion of the unearned fees to the client (Rule of Professional Conduct 3-700(D)(2)).

In case no. 10-O-04053, Respondent was hired was to obtain a home mortgage loan modification for a client. The client paid Respondent \$2,495 in advanced legal fees. Respondent failed to take any action to obtain a loan modification on the client's behalf (Rule of Professional Conduct 3-110(A)), and failed to refund any portion of the unearned fees to the client (Rule of Professional Conduct 3-700(D)(2)).

In case no. 10-O-04083, Respondent was hired was to obtain a home mortgage loan modification for a client for \$3,000 in advanced legal fees. On October 17, 2009 the client paid \$500 in advanced legal fees for the matter. The \$500 advanced legal fees were charged and received after October 11, 2009 in violation of California Civil Code section 2944.7(a)(1) (Business and Professions Code section 6106.3).

In case no. 10-O-04092, Respondent was hired was to obtain two home mortgage loan modifications for a client. The client paid Respondent \$4,495 in advanced legal fees, which Respondent shared with a non-attorney (Rule of Professional Conduct 1-320). Respondent failed to take any action to obtain a loan modification on the client's behalf (Rule of Professional Conduct 3-110(A)), and failed to refund any portion of the unearned fees to the client (Rule of Professional Conduct 3-700(D)(2)).

In case no. 10-O-04832, Respondent was hired was to obtain a home mortgage loan modification for a client. The client paid Respondent \$2,495 in advanced legal fees. Respondent failed to take any action to obtain a loan modification on the client's behalf (Rule of Professional Conduct 3-110(A)), and failed to refund any portion of the unearned fees to the client (Rule of Professional Conduct 3-700(D)(2)).

In case no. 10-O-04840, Respondent was hired was to obtain two home mortgage loan modifications for a client. The client paid Respondent \$3,995 in advanced legal fees. Respondent failed to take any action to obtain a loan modification on the client's behalf (Rule of Professional Conduct 3-110(A)), and refunded only \$1,000 of the unearned fees to the client (Rule of Professional Conduct 3-700(D)(2)).

In case no. 10-O-05609, Respondent was hired was to obtain a home mortgage loan modification for a client. The client paid Respondent \$2,495 in advanced legal fees. Respondent failed to take any action to obtain a loan modification on the client's behalf (Rule of Professional Conduct 3-110(A)), and failed to refund any portion of the unearned fees to the client (Rule of Professional Conduct 3-700(D)(2)).

In case no. 10-O-08697, Respondent was hired was to obtain a home mortgage loan modification for a client. The client paid Respondent \$1,495 in advanced legal fees. Respondent failed to take any action to obtain a loan modification on the client's behalf (Rule of Professional Conduct 3-110(A)), and failed to refund any portion of the unearned fees to the client (Rule of Professional Conduct 3-700(D)(2)).

In case nos. 10-O-00081, 10-O-00088, 10-O-04078, 10-O-4405 and 10-O-05611, Respondent, through his staff and agents, advised clients to pay advanced legal fees of loan modification services to be performed by Respondent. These advanced legal fees were deposited into a checking account which belonged to a non-lawyer and Respondent accepted checks issued from this account by the non-lawyer, directly or indirectly sharing legal fees with a person who is not a lawyer (Rule of Professional Conduct 1-320).

### **Harm**

Respondent's conduct caused significant harm to the Munozes, Lemus and Wendham. The Munozes paid legal fees for Respondent's filing of a meritless *pro per* motion. They still have not had the unearned advanced fees refunded. Lemus was forced to go to Small Claims Court to obtain a refund of unearned fees, and obtained a judgment which has not been satisfied. Wendham paid fees to Respondent for work he performed after Respondent started his two year suspension. Those fees have not been refunded. Failure to pay monies owed to a client constitutes harm recognized as an aggravating factor. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 170.

Moreover, Respondent's two instances of practicing law while suspended significantly harmed the administration of justice. Significant harm to clients or the administration of justice is an aggravating factor. (Standard 1.2(b)(iv)).

### **Multiple/Pattern of Misconduct**

Respondent's conduct in the Munoz, Lemus, and Wendham client matters which are the subject of this stipulation, and his conduct in the 24 client matters which were the basis of the prior discipline, evidence a pattern of misconduct. (Standard 1.2(b)(ii).) A pattern of misconduct may be established even where the acts and omissions encompass a wide range of improper behavior. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657. As in *Hindin*, Respondent's actions in multiple client matters show a habitual disregard of his clients' interests and his ethical duties.

## AUTHORITIES SUPPORTING DISCIPLINE

The Standards for Attorney Sanctions for Professional Misconduct provide a “process of fixing discipline” pursuant to a set of written principles to “better discharge the purposes of attorney discipline as announced by the Supreme Court.” (Rules of Procedure of State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.” (*In re Morse* (1995) 11 Cal.4th 184, 205; Standard 1.3.)

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. 81, 92, quoting *In re Brown* (1995) 12 Cal. 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.)

In the current stipulation, Respondent admits to committing eight acts of professional misconduct. Standard 1.6 (a) requires that where a Respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable standards.

Rule 9.20 of the California Rules of Court states, “[a] suspended member’s willful failure to comply with the provisions of this rule constitutes a cause for disbarment or suspension and for revocation of any pending probation.” Respondent’s violation of Rule 9.20 alone warrants his disbarment. The extent of his misconduct since imposition of his prior discipline clearly requires Respondent’s disbarment.

Respondent’s disbarment is also required by Standard 2.6, which applies to Respondent’s multiple violations of Business and Professions Code section 6068. Standard 2.6 provides that culpability of a member of a violation of Business and Professions Code section 6068 shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3. Here Respondent failed to cooperate in the Munoz investigation in violation of Business and Professions Code section 6068(i) in Case No. 11-O-13837, practiced law while suspended in violation of Business and Professions Code section 6068(a) in Case Nos. 11-O-18137 and 12-O-15351, and failed to comply with his probation terms in violation of Business and Professions Code section 6068(k) in Case No. 12-O-13026.

Here Respondent’s offenses are serious and wide-ranging. His continued practice after his suspension commenced seriously jeopardized two client matters, which caused significant harm to both clients. His failure to refund fees owed the Munozes and Lemus as detailed above constitutes significant harm. Disbarment is the appropriate level of discipline for these matters under Standard 2.6.

Additionally, Standard 1.7(a) provides that if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

In this case, disbarment is the appropriate level of discipline. Under Standard 1.7(a), Respondent's discipline in the current proceeding shall be greater than that imposed in the prior proceeding. Here, the prior discipline imposed was not remote in time to the current proceeding. In fact the current proceeding includes a violation of probation conditions from the prior discipline. Also, the prior discipline was not minimal in severity but rather very serious. Respondent's prior discipline was at least two years' actual suspension from the practice of law. Disbarment in the current proceeding is consistent with Standard 1.7(a).

Moreover there are several aggravating circumstances in addition to Respondent's prior record of discipline, since Respondent has committed multiple acts of misconduct (Standard 1.2(b)ii)) and his conduct caused the Munozes, Lemus and Wendam significant harm (Standard 1.2(b)iv). There are no mitigating circumstances.

Applying the standards in the this case, the appropriate level of discipline is disbarment to serve the purposes of discipline under Standard 1.3: the protection of the public, the courts and the legal profession.

## **RESTITUTION**

### **Case No. 11-O-13837 – The Munoz Matter**

1. Respondent must make restitution to the Munozes in the amount of \$1,500 plus 10 percent interest per year from November 29, 2006.
2. Respondent must make restitution to the Munozes in the amount of \$300 plus 10 percent interest per year from February 22, 2007.
3. Respondent must make restitution to the Munozes in the amount of \$350 plus 10 percent interest per year from October 30, 2008.
4. If the Client Security Fund has reimbursed the Munozes for all or any portion of the principal amounts owed under paragraphs 1 through 3, Respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5.

### **Case No. 12-O-14231 – The Lemus Matter**

1. Respondent must make restitution to Gonzalo Lemus in the amount of \$1,450 plus 10 percent interest per year from July 27, 2010.
2. If the Client Security Fund has reimbursed Lemus for all or any portion of the principal amount, Respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5.

## **PENDING PROCEEDINGS**

The disclosure date referred to, on page 2, paragraph A(7), was November 20, 2012.

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

The parties hereby waive any variance between the Notice of Disciplinary Charges filed on December 19, 2011 in Case No. 11-O-13837 and the facts and conclusions of law contained in this stipulation.

**DISMISSALS**

The parties respectfully request the Court to dismiss Count One of the Notice of Disciplinary Charges filed on December 19, 2011 in the interests of justice.

**FURTHER AGREEMENTS OF THE PARTIES**

The factual statements contained in the Stipulation constitute admissions of fact and may not be withdrawn by either party, except with court approval

**COSTS**

Respondent acknowledges that the Office of Chief Trial Counsel has informed him that as of November 20, 2012, the estimated costs in this matter are \$7,348.70. 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.




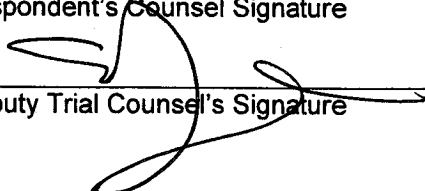
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In the Matter of: GARY D. OLIVE	Case number(s): 11-O-13837, 11-O-18137, 12-N-11126, 11-O-13026, 12-O-14231, 12-O-15351
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### SIGNATURE OF THE PARTIES

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.

11/20/12            Gary D. Olive  
Date                      Respondent's Signature                      Print Name

11-20-12            Erin McKeown Joyce  
Date                      Deputy Trial Counsel's Signature                      Print Name

(Do not write above this line.)

In the Matter of: GARY D. OLIVE	Case Number(s): 11-O-13837, 11-O-18137, 12-N-11126, 12-O-13026, 12-O-14231, 12-O-15351
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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.

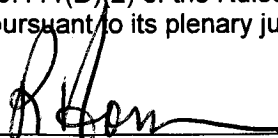
1. On page 15, Restitution, paragraphs 1, 2 and 3 – delete “the Munozes” and replace it with “Juan Carlos Ramirez Munoz and Maria Beatriz Adriana Francia Alvarez.”

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

Respondent Gary D. Olive 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.

Date

12-10-12

  
RICHARD A. HONN  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 11, 2012, 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:

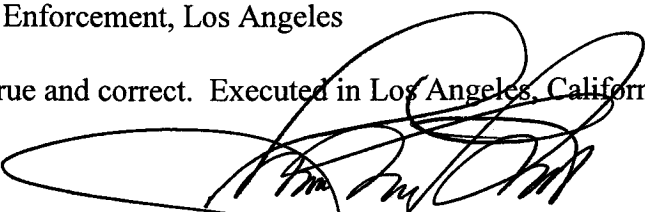
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

GARY D. OLIVE  
GARY OLIVE  
2319 S RIMPAU APT 1  
LOS ANGELES, CA 90016

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

ERIN JOYCE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 11, 2012.



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Johnnie Lee Smith  
Case Administrator  
State Bar Court