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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Mia R. Ellis Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 213-765-1380 Bar # 228235	Case Number(s): 12-O-11175-DFM 12-O-12096 12-O-15275 12-O-15582 12-O-15662	For Court use only <div style="text-align: center; font-size: 24pt; font-weight: bold;">PUBLIC MATTER</div> <div style="text-align: center; font-size: 24pt; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 18pt; font-weight: bold;">APR 18 2013</div> <div style="text-align: center; font-size: 24pt; font-weight: bold;">RZ</div> <div style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
In Pro Per Respondent Daniel Issac Wagner Wagner & Associates 1875 Century Park East Suite 1460 Los Angeles, CA 90067 310-445-1800 Bar # 195610	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Daniel Issac Wagner Bar # 195610 A Member of the State Bar of California (Respondent)	(This area is shared with the previous row and contains the same text as above.)	

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 2, 1998.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 16 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):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [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** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case 09-O-17754
 - (b) Date prior discipline effective May 14, 2011
 - (c) Rules of Professional Conduct/ State Bar Act violations: Two counts of Rules of Professional Conduct, rule 4-100(A)
 - (d) Degree of prior discipline 90 days actual suspension, two years stayed suspension, two years probation
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.

Please see stipulation attachment pages 12-13 for additional information regarding prior discipline.

- (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. Please see stipulation attachment 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. Please see stipulation attachment 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:

Please see stipulation attachment page 13.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of two years.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of two years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of six (6) months.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

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- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

No Ethics School recommended. Reason: _____

- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

- (10) The following conditions are attached hereto and incorporated:

- | | |
|-----------------------------------------------------|-----------------------------------------------------------|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National

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Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

No MPRE recommended. Reason:

- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Daniel Isaac Wagner

CASE NUMBER(S): 12-O-11175, 12-O-12096, 12-O-15275, 12-O-15582
and 12-O-15662

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 12-O-11175 (Complainant: John A. Crimins)

FACTS:

1. On August 5, 2010 and August 13, 2010, John Crimins ("Crimins") received notices of intent to foreclose on his residential property from PHH Mortgage.
2. On September 15, 2010, Crimins hired Respondent to provide legal services in connection with negotiating and obtaining a home mortgage loan modification for Crimins's property.
3. On September 15, 2010, at Respondent's request, Crimins entered into two agreements with Respondent, one for a "Forensic Audit" and one for a loan modification. Pursuant to the two agreements, Crimins agreed to pay \$3,000 in two payments: \$2,500 for the forensic loan audit, and an additional \$500 for Respondent to negotiate a loan modification. These were loan modification services.
4. On September 17, 2010, and October 12, 2010, Crimins paid Respondent a total of \$2,500 in advanced fees for loan modification services.
5. At the time Respondent charged and collected the advanced fees from Crimins, Respondent had not completed all of the loan modification services he had agreed to perform.
6. On September 26, 2010, Respondent caused a loan modification request package to be sent to PHH Mortgage, Crimins's lender.
7. On October 12, 2010, Respondent sent Crimins a "Forensic Loan Audit and Mortgage Compliance Analysis Report" dated October 12, 2010.
8. In January 2011, Respondent notified Crimins that he was approved for a trial loan modification.
9. On February 28, 2011, Respondent sent Crimins a letter in which he stated he was terminating the retainer agreement because Crimins did not pay the remaining \$500 for the loan modification.

10. On January 27, 2012, Crimins sent Respondent a letter requesting a refund of the \$2,500 in advanced attorney's fees he paid Respondent. Respondent received the request but did not provide a refund.

11. In July 2012, Crimins received a Small Claims Judgment against Respondent for the \$2,500 in advanced attorney's fees.

12. On March 20, 2013, after the initiation of a State Bar disciplinary matter, Respondent refunded \$2,500 in advanced fees to Crimins.

CONCLUSIONS OF LAW:

13. By agreeing to negotiate a mortgage loan modification for Crimins charging \$3,000 and collecting \$2,500 in advanced fees from Crimins when Respondent had not completed all loan modification services he had agreed to perform, Respondent negotiated, arranged or otherwise offered to perform a mortgage loan modification for a fee paid by the borrower, and demanded, charged, collected or received such fee prior to fully performing each and every service Respondent had contracted to perform or represented that he would perform, in willful violation of section 2944.7(a)(1) of the Civil Code, and thereby wilfully violated Business and Professions Code section 6106.3(a).

Case No. 12-O-12096 (Complainant: Naseem A. Haq)

FACTS:

14. On August 27, 2010, Mohammad Haq ("Haq") hired Respondent to provide legal services in connection with negotiating and obtaining a home mortgage loan modification for Haq's property.

15. On August 27, 2010, Haq entered into two agreements with Respondent, one for a "Forensic Audit" and one for a loan modification. Pursuant to the two agreements, Haq agreed to pay \$3,000 in two payments: first \$2,500 for the audit, and an additional \$500 for Respondent to negotiate the loan modification. These were loan modification services.

16. On August 30, 2010 and October 1, 2010, Haq paid Respondent a total of \$2,500 in advanced fees for loan modification services.

17. At the time Respondent charged and collected the advanced fees from Haq, Respondent had not completed all of the loan modification services he had agreed to perform.

18. On September 14, 2010, Respondent submitted a request to Haq's lender, IndyMac Mortgage Services, a division of OneWest Bank FSB, to list Respondent's law office, Summit Law Center, as an authorized party on Haq's mortgage loan.

19. On September 14, 2010, Respondent provided Haq with a "Forensic Loan Audit and Mortgage Compliance Analysis Report" dated September 14, 2010.

20. Between September 2010 and March 2011, Respondent and Haq exchanged phone calls about the loan modification.

21. In March 2011, Haq terminated Respondent's representation.

22. On March 8, 2013, after the initiation of a State Bar disciplinary matter, Respondent refunded \$2,500 in advanced fees to Haq.

CONCLUSIONS OF LAW:

23. By agreeing to negotiate a mortgage loan modification for Haq charging \$3,000 and collecting \$2,500 in advanced fees from Haq when Respondent had not completed all loan modification services he had agreed to perform, Respondent negotiated, arranged or otherwise offered to perform a mortgage loan modification for a fee paid by the borrower, and demanded, charged, collected or received such fee prior to fully performing each and every service Respondent had contracted to perform or represented that he would perform, in willful violation of section 2944.7(a)(1) of the Civil Code, and thereby wilfully violated Business and Professions Code section 6106.3(a).

Case No. 12-O-15275 (Complainant: Elizabeth Uriza)

FACTS:

24. In May 2010, Daniel and Elizabeth Uriza ("Urizas") hired Respondent to file a Chapter 13 bankruptcy petition and to continue the process to finality. The Urizas paid Respondent \$3,000 in advanced fees and \$466.40 for costs. On May 28, 2010, Respondent asked the Urizas for another \$5,000 for the Chapter 13 bankruptcy petition. The Urizas paid Respondent the additional \$5,000.

25. On May 24, 2010, Respondent caused a Chapter 13 bankruptcy petition to be filed on behalf of the Urizas. The Chapter 13 bankruptcy petition did not include all required documents and schedules for filing, including a certificate of pre-petition credit counseling. On May 25, 2010, the Bankruptcy Court ordered the Urizas to file the proper documents and schedules within fourteen days. Respondent received the order but did not file the documents and schedules.

26. On June 10, 2010, the Bankruptcy Court issued an order and notice of dismissal for failure to comply with the Court's May 25, 2010 order. Respondent received this order.

27. On June 25, 2010, Respondent filed a motion to vacate the order of dismissal and to reinstate the automatic stay.

28. On August 4, 2010, the Bankruptcy Court denied Respondent's motion.

29. On August 13, 2010, the Bankruptcy Court issued an Order to Show Cause ("OSC") why Respondent should not disgorge all fees received from the Urizas. The Court ordered that on or before September 3, 2010: 1) Respondent was to file and serve upon the Urizas a declaration stating the date on which the Urizas contacted Respondent, the fees received, and when Respondent advised the Urizas to obtain pre-petition counseling; and 2) the Urizas were to serve Respondent with a declaration stating when the Urizas retained Respondent for bankruptcy, the fees paid, and whether Respondent advised them of the need for pre-petition credit counseling. The Court further ordered Respondent to appear in court on September 10, 2010 and show cause why any fees paid to him should not be disgorged due to

the Urizas' lack of eligibility to be debtors at the time Respondent filed their bankruptcy case. Respondent received the order.

30. On September 1, 2010, Respondent and the Urizas filed the declarations.

31. On September 10, 2010, Respondent appeared at the OSC.

32. On September 16, 2010, the Bankruptcy Court issued an order Conditionally Discharging OSC re Attorney fees provided that: a) Respondent shall file a new bankruptcy case for the Urizas and in that new case shall file and serve a motion to extend the automatic stay as to all creditors; b) Respondent shall not charge debtors any additional attorney fees to file or prosecute the new bankruptcy case; and c) Respondent shall file in the new bankruptcy case a Notice of Entry of Order re Attorney Fees, attaching a copy of the September 16, 2010 order. The Court ordered that if Respondent did not fully comply with the order, the Court will enter a separate order requiring Respondent to refund the attorney's fees to the Urizas. Respondent received the order.

33. On November 3, 2010, Respondent filed a Chapter 7 bankruptcy petition on behalf of the Urizas. In the Chapter 7 bankruptcy, Respondent did not file and serve a motion to extend the automatic stay as to all creditors or file a Notice of Entry of Order re Attorney Fees and attach a copy of the September 16, 2010 order.

34. Between on or about January 7, 2011 and April 16, 2011, Respondent collected additional attorney's fees from the Urizas in the amount of \$400.

35. In May 2012, the Urizas filed with the Bankruptcy Court a Motion for Order Requiring that Respondent Refund Attorney Fees. Respondent received the motion. Respondent filed a declaration in response to the motion.

36. On June 11, 2012, the Bankruptcy Court held a hearing on the Urizas' motion.

37. On July 11, 2012, the Court issued an order that: 1) the August 13, 2010 OSC was not discharged; 2) Respondent was in civil contempt for willful violation of the September 16, 2010 Order; 3) on or before July 26, 2012, Respondent shall mail a cashier's check for \$8,400 payable to the Urizas to the United States Bankruptcy Court; 4) if Respondent does not purge his contempt by timely and fully complying with paragraph 3, then beginning July 27, 2012, Respondent would be sanctioned \$250 per day. Respondent received this order.

38. On August 1, 2012, Respondent belatedly filed a declaration with the Court and included a refund to the Urizas for \$8,400.

39. On August 8, 2012, the Bankruptcy Court issued an Order that Respondent's obligation under the July 11, 2012 order was satisfied.

CONCLUSIONS OF LAW:

40. In the Chapter 7 bankruptcy matter, by failing to file and serve a motion to extend the automatic stay as to all creditors, and by failing to file a Notice of Entry of Order re Attorney Fees and attach a copy of the September 16, 2010 order, and by collecting addition attorneys fees, Respondent

wilfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear, in willful violation of Business and Professions Code section 6103.

41. By failing to file a bankruptcy petition with all the required documents and schedules for filing, including a certificate of pre-petition credit counseling, and failing to file and serve a motion to extend the automatic stay as to all creditors or file a Notice of Entry of Order re Attorney Fees and attach a copy of the September 16, 2010 order, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

Case No. 12-O-15582 (Complainant: Carlos Sandoval)

FACTS:

42. On August 19, 2010, Carlos Sandoval ("Sandoval") hired Respondent to negotiate and obtain a home mortgage loan modification for Sandoval's property.

43. On August 19, 2010, Sandoval entered into two agreements with Respondent, one for a "Forensic Audit" and one for a loan modification. Pursuant to the two agreements, Sandoval agreed to pay \$3,000 which would be paid in two payments: \$2,500 for the audit and an additional \$500 for Respondent to negotiate a loan modification. These were loan modification services.

44. On August 19, 2010, Respondent's law office, Summit Law Center, withdrew \$2,500 from Sandoval's bank account.

45. On September 13, 2010, Respondent provided Sandoval with a "Forensic Loan Audit and Mortgage Compliance Analysis Report" dated September 13, 2010.

46. At the time Respondent charged and collected the advanced fees from Sandoval, he had not completed all of the loan modification services he had agreed to perform.

47. By March 25, 2013, after the initiation of a State Bar disciplinary matter, Respondent refunded \$2,500 in advanced fees to Sandoval.

CONCLUSIONS OF LAW:

48. By agreeing to negotiate a mortgage loan modification for Sandoval charging \$3,000 and collecting \$2,500 in advanced fees from Sandoval when Respondent had not completed all loan modification services he had agreed to perform, Respondent negotiated, arranged or otherwise offered to perform a mortgage loan modification for a fee paid by the borrower, and demanded, charged, collected or received such fee prior to fully performing each and every service Respondent had contracted to perform or represented that he would perform, in willful violation of section 2944.7(a)(1) of the Civil Code, and thereby wilfully violated Business and Professions Code section 6106.3(a).

Case No. 12-O-15662 (Complainant: Maurice Thompson)

FACTS:

49. On October 16, 2010, Maurice and Marjorie Thompson ("Thompsons") hired Respondent to negotiate and obtain a home mortgage loan modification for Thompson's property.

50. On October 16, 2010, the Thompsons entered into two agreements with Respondent, one for a "Forensic Audit" and one for a loan modification. Pursuant to the two agreements, the Thompsons agreed to pay \$3,000 which would be paid in two payments: \$2,500 for the audit, and an additional \$500 for Respondent to negotiate a loan modification. These were loan modification services.

51. On October 28, 2010 and November 28, 2010, the Thompsons paid Respondent a total of \$2,500 in advanced fees.

52. On December 15, 2010, Respondent sent the Thompsons a "Forensic Loan Audit and Mortgage Compliance Analysis Report" on December 15, 2010.

53. At the time Respondent charged and collected the advanced fees from the Thompsons, he had not completed all of the loan modification services he had agreed to perform.

54. In February 2011, the Thompsons called Respondent's office and terminated Respondent's services. They also asked for a refund of the \$2,500 in advanced attorney's fees paid to Respondent.

55. On November 30, 2012, the Thompsons sent Respondent a certified letter requesting a refund. Respondent received the letter.

56. On December 17, 2012, after the initiation of a State Bar disciplinary matter, Respondent sent the Thompsons a check for \$2,500 as a refund.

CONCLUSIONS OF LAW:

57. By agreeing to negotiate a mortgage loan modification for the Thompsons charging \$3,000 and collecting \$2,500 in advanced fees from the Thompsons when Respondent had not completed all loan modification services he had agreed to perform, Respondent negotiated, arranged or otherwise offered to perform a mortgage loan modification for a fee paid by the borrower, and demanded, charged, collected or received such fee prior to fully performing each and every service Respondent had contracted to perform or represented that he would perform, in willful violation of section 2944.7(a)(1) of the Civil Code, and thereby wilfully violated Business and Professions Code section 6106.3(a).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline: Respondent has one prior record of discipline. Effective May 14, 2011, in State Bar Case No. 09-O-17754, Respondent stipulated to two years suspension, with imposition of discipline stayed, two years probation with conditions including actual suspension of 90 days. Respondent stipulated to two counts of violating Rules of Professional Conduct, rule 4-100(A) [failure

to maintain funds in trust and commingling]. The misconduct occurred in 2009 and involved one client matter. (Standard 1.2(b)(i))

Harm: The current misconduct caused significant harm to four clients. In each of these cases, Respondent's clients were financially distressed and sought Respondent's assistance at critical junctures in their lives. Respondent's clients were without their fees for more than two years. Respondent's failure to promptly refund their illegal fees deprived them of their money. (Standard 1.2(b)(iv).)

Multiple Acts of Misconduct: Respondent's conduct involved multiple acts of wrongdoing as there are six counts of misconduct in five client matters. (Standard 1.2(b)(ii).)

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Mitigating Circumstances: Respondent is entitled to mitigation for entering into a full stipulation with the Office of the Chief Trial Counsel prior to the trial, thereby saving State Bar Court time and resources. (*In re Downey* (2009) 5 Cal. State Bar Ct. Rptr. 151, 156; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993-994.) However, the facts in the matters could have been proven by documentary evidence and witness testimony. Thus, Respondent's cooperation is entitled to some, but not great, weight in mitigation.

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 Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. 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; std 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.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.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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. As discussed above, Respondent has one prior imposition of discipline arising from conduct that occurred in 2009, four years ago, and involved failing to maintain funds in trust and commingling personal funds in his client trust account.

The misconduct in Respondent's prior was neither remote nor minimal in severity, so greater discipline is appropriate in the current matter.

Respondent admits to committing six acts of professional misconduct in five client matters. 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.

The most severe sanction applicable to Respondent's misconduct is found in standard 2.6 which applies to Respondent's violation of Business and Professional Code section 6103.

Standard 2.6 states that culpability of a member of a violation of the Business and Professions Code standards specified therein, including section 6103, 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's misconduct harmed his clients as he collected illegal fees and, in three of the five cases, he failed to promptly provide full refunds. Moreover, four of the five matters involved clients who were in financial distress as they wanted to modify their home loan mortgage. However, Respondent did perform some legal services for his clients and did not abandon the representation. Also, Respondent has refunded all of the illegal fees.

In the Matter of Swazi Taylor (November 9, 2012, No. 10-O-05171) 5 Cal. State Bar Ct. Rpr. __ [2012 WL 5489045 (Cal. Bar Ct.)], is also instructive. The Review Department found Respondent culpable of nine counts of violating Business and Professions Code section 6106.3. In each instance, Taylor had not refunded any of the illegal fees. Factors in aggravation included harm, multiple acts of misconduct and lack of insight/remorse. The Review Department recommended that Respondent be suspended for two years suspension, that the suspension be stayed, and that Respondent be placed on probation for two years with conditions including actual suspension for six months, and until he makes restitution for all the fees he illegally collected.

Respondent's conduct is serious. He repeatedly violated loan modification statutes designed to protect the public. In applying *Taylor*, the instant case involves five client matters, while *Taylor* involved eight client matters. However, unlike *Taylor*, Respondent has refunded the illegal fees but the instant case also involves, among other things, Respondent's violation of a court order. Furthermore, Respondent has a prior record of discipline that is not remote and also involved serious conduct. Thus, balancing the facts, conclusions of law, and the factors in aggravation and mitigation, the parties stipulate that a level of discipline consistent with Standard 2.6 and *Taylor*, six months actual suspension, adequately serves the purposes of attorney discipline.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was April 3, 2013.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 3, 2013, the prosecution costs in this matter are \$7,462.37. Respondent further acknowledges that

this is an estimate and should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

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

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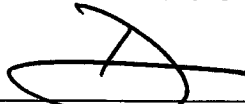
In the Matter of: Daniel I. Wagner	Case number(s): 12-O-11175, 12-O-12096, 12-O-15275, 12-O-15582, and 12-O-15662
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SIGNATURE OF THE PARTIES

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.

4/8/13

Date



Respondent's Signature

Daniel I. Wagner

Print Name

Date

4/11/13

Date

Respondent's Counsel Signature



Deputy Trial Counsel's Signature

Print Name

Mia R. Ellis

Print Name

(Do not write above this line.)

In the Matter of: Daniel I. Wagner	Case Number(s): 12-O-11175, 12-O-12096, 12-O-15275, 12-O-15582 and 12-O-15662
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ACTUAL SUSPENSION ORDER

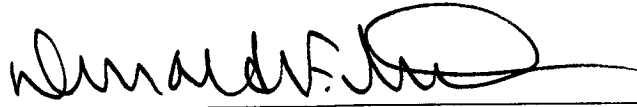
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

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

The 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.)**

4/14/13

Date



DONALD F. MILES
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 April 18, 2013, I deposited a true copy of the following document(s):

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

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

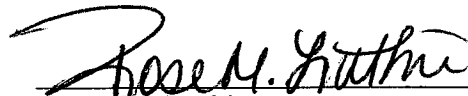
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DANIEL I. WAGNER
WAGNER & ASSOCIATES
1925 CENTURY PARK E STE 1380
LOS ANGELES, CA 90067

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

MIA ELLIS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 18, 2013.



Rose M. Luthi
Case Administrator
State Bar Court