

ORIGINAL**PUBLIC MATTER**

**State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION**

<p>Counsel For The State Bar</p> <p>Kim Kasreliovich Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1378</p> <p>Bar # 261766</p>	<p>Case Number(s): 12-O-13177 - DFM, 12-O-14957, 12-O-16231 (unfiled), 12-O-16966 (unfiled), 12-O-17906 (unfiled)</p>	<p>For Court use only</p> <p align="center">FILED</p> <p align="center">APR 15 2013</p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Antonio Munoz 5345 E Olympic Blvd Los Angeles, CA 90022 (323) 722-1606</p> <p>Bar # 169530</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: ANTONIO MUNOZ</p> <p>Bar # 169530</p> <p>A Member of the State Bar of California (Respondent)</p>		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 13, 1993.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 17 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



- (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: Three (3) billing cycles following the effective date of the Supreme Court order. (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
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **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.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (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. For a further discussion of Multiple Acts see 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.
- (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:

For Additional Mitigating Circumstances see pages 13-14.

D. Discipline:

- (1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of one (1) year.

- 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 (2) 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.
- (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 checked="" 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 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.**

(Do not write above this line.)

☐ 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:**

(Do not write above this line.)

In the Matter of: ANTONIO MUNOZ	Case Number(s): 12-O-13177 - DFM, 12-O-14957, 12-O-16231 (unfiled), 12-O-16966 (unfiled), 12-O-17906 (unfiled)
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Financial Conditions

a. Restitution

- ☒ Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Hyder Razavi	\$4,200	January 9, 2012
Suzanne Alexander	\$1,500	February 25, 2012

- ☐ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- ☐ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- ☐ 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.

c. Client Funds Certificate

- ☒ 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- ☒ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:

ANTONIO MUNOZ

CASE NUMBER(S):

12-O-13177 – DFM, 12-O-14957, 12-O-16231 (unfiled),
12-O-16966 (unfiled) and 12-O-17906 (unfiled)

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 Nos. 12-O-13177 and 12-O-14957 (State Bar Investigation)

FACTS:

1. At all times relevant herein, Respondent maintained a client trust account at JP Morgan Chase Bank, account no. xxxxxx3275¹ (the “CTA”).

2. Between October 1, 2011, and August 31, 2012, Respondent did not promptly remove all funds which he had earned as fees from the CTA as soon as his interest in the funds became fixed and, instead, Respondent left his fees in the CTA for the payment of his personal expenses.

3. In mid 2011, Respondent could no longer afford to pay his secretary of 10 years and was forced to end her employment. Thereafter, Respondent had no assistance and managed his accounts and financial affairs on his own. Respondent became overwhelmed and misused his CTA.

4. Between October 1, 2011, and August 31, 2012, Respondent paid numerous personal expenses out of the CTA, including but not limited to the following:

- a) Nine payments to Verizon Wireless,
- b) Thirty-three payments to American Express,
- c) Nine payments to AT&T,
- d) Five payments to First Premier Bank Credit Card,
- e) Three payments to ACSC Car Insurance, and
- f) Three payments to Vons.

5. Between October 1, 2011, and August 31, 2012, Respondent issued the following checks and initiated the following ACH debit transfers out of his CTA:

<u>Date</u>	<u>Check No.</u>	<u>Payee</u>	<u>Amount</u>	<u>CTA Balance</u>
01/23/2012	ACH debit	First Premier Bank Credit Card	\$1,173.73	\$458.45
03/13/2012	#2789	Mary Pereyeda (rent)	\$1,800.00	\$940.40
03/14/2012	#2620	Antonio Munoz	\$1,350.00	\$760.40

¹ The account number has been partially redacted due to privacy concerns.

03/19/2012	ACH debit	Unknown	\$569.18	\$185.43
03/20/2012	#2789	Mary Pereyeda (rent)	\$1,800.00	\$185.43
03/26/2012	ACH debit	Unknown	\$569.18	\$85.43
05/04/2012	#2637	CVS	\$70.31	\$61.46
05/08/2012	ACH debit	American Express	\$650.00	\$466.46
05/11/2012	ACH debit	American Express	\$650.00	\$199.74
05/22/2012	ACH debit	First Premier Bank Credit Card	\$621.06	\$10.24

6. All of the checks were returned unpaid and ACH debit transfers were rejected for payment. Check number 2789 and the ACH debits in the amount of \$569.18 and \$650.00, respectively, were each presented twice for payment. The total amount of the checks that were NSF when Respondent presented them for payment is \$9253.46.

7. Respondent issued check numbers 2789, 2620 and 2637, and enacted ACH debit transfers from the CTA as set forth in paragraph 4 above, when he knew, or was grossly negligent in not knowing, that there were insufficient funds in the CTA to cover the transactions at the time he issued the checks and enacted the transfers and at the time of presentment.

CONCLUSIONS OF LAW:

8. By maintaining earned fees in the CTA and by paying personal expenses from the CTA, Respondent deposited or commingled funds belonging to Respondent in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of the Rules of Professional Conduct, rule 4-100(A).

9. By issuing check numbers 2789, 2620 and 2637, and by enacting ACH debit transfers on January 23, 2012, March 19, 2012, March 26, 2012, May 8, 2012, May 11, 2012 and May 22, 2012 from the CTA against insufficient funds at the time he issued the checks and enacted the transfers and at the time of presentment, Respondent committed acts involving moral turpitude in willful violation of the Business and Professions Code, section 6106.

Case No. 12-O-16231 (Complainant: Hyder Razavi)

FACTS:

10. On January 3, 2012, Hyder Razavi ("Razavi") hired Respondent to incorporate two business for Razavi. Razavi paid Respondent \$1,700 in advanced attorney fees.

11. On January 9, 2012, Razavi hired Respondent to assist with the collection of a debt and paid Respondent an additional \$2,500 in advanced attorney fees.

12. From January 2012 through July 2012, Razavi left three voicemail messages for the Respondent requesting a status update. Respondent received the messages but failed to respond to Razavi's request for information.

13. In July 2012, Respondent's phone was disconnected.

14. Respondent never formed the two corporations, took any action to collect the debt or provided Razavi with any legal services of value.

15. Respondent did not earn any of the \$4,200 received from Razavi as advanced attorney fees.

16. At no time has Respondent refunded any of the \$4,200 received from Razavi as advanced attorney fees.

17. On August 31, 2012, the State Bar opened an investigation based on Razavi's complaint.

18. On October 17, 2012, an investigator for the State Bar mailed a letter to Respondent at his membership records address, 5345 E. Olympic Blvd., Los Angeles, CA, 90022, requesting that he provide a written response to the allegations raised by Razavi's complaint. Respondent received the letter but failed to respond in any way.

19. On November 6, 2012, an investigator for the State Bar mailed a second letter to Respondent at his membership records address requesting that he provide a written response to the allegations raised by Razavi's complaint. Respondent received the letter but failed to respond in anyway.

20. At no time did Respondent provide the State Bar investigator with a written response to the allegations raised by Razavi's complaint.

CONCLUSIONS OF LAW:

21. By failing to form the two corporations, failing to collect the debt and failing to provide any legal services of value to Razavi, Respondent intentionally failed to perform legal services with competence, in willful violation of the Rules of Professional Conduct, rule 3-110(A).

22. By failing to refund \$4,200 to Razavi, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of the Rules of Professional Conduct, rule 3-700(D)(2).

23. By failing to respond to Razavi's requests for a status update, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services, in willful violation of the Business and Professions Code, section 6068(m).

24. By failing to provide a written response to the allegations raised by Razavi's complaint as requested by the State Bar investigator, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent, in willful violation of Business and Professions Code, section 6068(i).

Case No. 12-O-16966 (State Bar Investigation)

FACTS:

25. Between August 17, 2012, and September 10, 2012, Respondent issued the following checks when he knew, or was grossly negligent in not knowing, there were insufficient funds in his account to pay them:

<u>Date</u>	<u>Check No.</u>	<u>Payee</u>	<u>Amount</u>	<u>CTA Balance</u>
08/17/2012	#2663	Delage Landen	\$4,000.00	\$1,1631.50
08/22/2012	#2663	Delage Landen	\$4,000.00	\$1,531.50
08/28/2012	#2708	Raul Armendariz	\$377.41	\$281.50
09/10/2012	E-Check	Verizon Wireless	\$418.41	\$337.65

26. All of the checks, both paper and electronic, were returned unpaid. Check number 2663 was presented for payment twice.

27. Respondent issued check numbers 2663 and 2708, and enacted an E-check withdraw on September 10, 2012, from the CTA when he knew or was grossly negligent in not knowing that there were insufficient funds in the CTA to cover the transactions at the time they were issued and enacted and when they were presented to the bank for payment.

28. On October 15, 2012, the State Bar opened an investigation based on notification from JP Morgan Chase Bank ("the Bank") that checks were presented for payment to Respondent's CTA against insufficient funds.

29. On November 28, 2012, an investigator for the State Bar mailed a letter to Respondent at his membership records address, 5345 E. Olympic Blvd., Los Angeles, CA, 90022, requesting that he provide a written response to the notification received from the Bank regarding the CTA. Respondent received the letter but failed to respond in any way.

30. On December 13, 2012, an investigator for the State Bar mailed a second letter to Respondent at his membership records address requesting that he provide a written response to the notification received from the Bank regarding the CTA. Respondent received the letter but failed to respond in any way.

31. At no time did Respondent provide the State Bar investigator with a written response to the notification received from the Bank regarding the CTA.

CONCLUSIONS OF LAW:

32. By issuing check numbers 2663 and 2708, and by enacting an E-check withdraw on September 10, 2012, against insufficient funds in the CTA to cover the transactions at the time they were issued and enacted and when they were presented to the bank for payment, Respondent committed acts involving moral turpitude, in willful violation of Business and Professions Code, section 6106.

33. By failing to provide a written response to the notification received from the Bank regarding the CTA as requested by the State Bar investigator, Respondent failed to cooperate and participate in a disciplinary investigation, in willful violation of Business and Professions Code, section 6068(i).

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Case No. 12-O-17906 (Complainant: Suzanne Alexander)

FACTS:

34. On February 25, 2012, Suzanne Alexander ("Alexander") hired Respondent to represent her in a civil action for past due rent and other damages against two former tenants.

35. Alexander paid Respondent \$1,500 in advance attorney fees.

36. In March 2012 Respondent informed Alexander that the complaint had been filed and the parties had been served.

37. Alexander called Respondent in April, May and June 2012 and left messages requesting a status update. Respondent received the messages but failed to respond in any way.

38. In June 2012, Alexander scheduled an appointment to meet with Respondent on June 14, 2012. Respondent failed to appear at their scheduled appointment.

39. On June 19, 2012, Respondent met with Alexander at her home and confirmed that the complaint had been filed and the parties had been served. Respondent further advised Alexander that he would send her the documents necessary to obtain a judgment against the defendants.

40. Respondent never sent Alexander the documents necessary to obtain a judgment against the defendants.

41. Subsequent to the June 19, 2012, meeting, Respondent again stopped communicating with Alexander. On September 17, 2012, Alexander sent three certified letters to each address she could find for Respondent. In the letter Alexander stated they would hire another attorney to complete the case if R could not do so. Respondent received the letters but did not respond.

42. Respondent at no time actually filed a complaint for Alexander, nor did he cause service on the defendants or provide any legal services of value.

43. Respondent did not earn any of the \$1,500 received from Alexander as advanced attorney fees.

44. At no time has Respondent refunded to Alexander any of the \$1,500 received as advanced attorney fees.

CONCLUSIONS OF LAW:

45. By failing to file a complaint or otherwise provide any legal services of value, Respondent intentionally failed to perform legal services with competence in willful violation of the Rules of Professional Conduct, rule 3-110(A).

46. By failing to refund \$1,500 to Alexander, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of the Rules of Professional Conduct, rule 3-700(D)(2).

47. By failing to respond to Alexander's requests for a status update and by failing to respond to Alexander's certified letter, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services in willful violation of the Business and Professions Code, section 6068(m).

48. By misrepresenting to Alexander that he had filed a complaint on behalf of Alexander and served the defendants when in fact he had not done so, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Multiple/Pattern of Misconduct: Respondent stipulated to 10 violations of the Rules of Professional Conduct and/or Business and Professions Code in the present case. The scope of the misconduct included many more individual acts, by issuing multiple NSF checks and engaging in repeated commingling, which together comprise these violations. Three acts of misconduct are sufficient for a finding of multiple acts. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-7.)

ADDITIONAL MITIGATING CIRCUMSTANCES.

Lack of Prior Misconduct: Although the misconduct is serious, Respondent has 18 years in practice without misconduct. Over 10 years of practice without discipline is worthy of mitigation. (Std. 1.2(e)(1); *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn 13 [noting that the Supreme Court has repeatedly found mitigation under Standard 1.2(e)(1) for lack of a prior record of discipline in cases involving serious misconduct] and citing *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029; see also *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Credit for Stipulation: Respondent has entered into a stipulation to facts, conclusions of law, and level of discipline and therefore is entitled to mitigation, in that it has saved the State Bar resources and also begins to show rehabilitation efforts. Despite Respondent's violations of section 6068(i), he is entitled to some mitigation, especially since multiple matters were unfilled and one was still in early investigation. (*In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50.)

Limited Period of Misconduct: Respondent's misconduct was limited to a period of approximately one year. (*In the Matter Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295 [occurrence of misconduct over a short period of time can be a mitigating factor]; *Frazer v. State Bar* (1987) 43 Cal.3d 564, 578 [occurrence of misconduct over a short time period considered in assessing discipline where the attorney committed many acts of wrongdoing during a period of roughly one year].)

AUTHORITIES SUPPORTING DISCIPLINE/DISCUSSION

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.)

Respondent admits to 10 violations of the Rules of Professional Conduct and Business and Professions Code. 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. Here, the most severe sanction applicable to Respondent’s misconduct is found in Standard 2.3 which applies to Respondent’s violation of section 6106 of the of the Business and Professions Code.

Standard 2.3 provides that culpability of a member of an act of moral turpitude toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or mislead and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member’s acts within the practice of law. In the present case, Respondent’s NSF checks and his misrepresentations to Alexander both amount to moral turpitude. Alexander suffered an eight month delay in the filing of her lawsuit because she relied on Respondent’s untrue statements. While the harm Alexander suffered does not rise to the level of aggravation under Standard 1.2(b)(iv), the harm can and should be acknowledged under the elements of this standard. Respondent’s misconduct directly involved the practice of law by misrepresentations to his client and misuse of his CTA.

While Standard 2.3 provides for a maximum of disbarment, Standard 2.2(b) carries a mandatory minimum level of discipline. Standard 2.2(b) applies to Respondent’s violation of rule 4-100(A) of the Rules of Professional Conduct. Culpability of a member of a violation of rule 4-100 shall result in at least a three month suspension from the practice of law, irrespective of mitigation, when the acts do not involve misappropriation. At times the court has deviated from the mandatory minimum set forth in Standard 2.2(b). (*Dudugjian v. State Bar* (1991) 52 Cal.3d 1092, 1100.) However, in the instant case a deviation from the mandate of Standard 2.2(b) is not appropriate due to additional acts of misconduct.

Respondent’s misconduct is serious, especially considering the misrepresentation and multiple acts. More than the minimum 90 days actual suspension is required despite any extenuating circumstances such as the loss of Respondent’s long-time secretary. However, Respondent should receive mitigation credit for his many years in practice without discipline. When Respondent’s mitigation is balanced against aggravation, six months actual suspension is adequate to achieve the purposes of attorney discipline. To achieve public protection the actual discipline in this case need not be more than six months, particularly with a Client Funds Certificate condition attached to Respondent’s probation. Additionally, requiring that Respondent be suspended for six months and until he pays

restitution will ensure that Respondent has met his past obligations to the public before resuming practice.

Case law also supports this result. An instructive case is *Kelly v. State Bar* (1991) 53 Cal.3d 509. In two separate client matters, the Supreme Court found that Kelly failed to deposit funds received from and for clients into his trust account, commingled the funds, willfully failed to promptly pay out funds and misappropriated \$750. In each client matter, Kelly issued two checks that were returned unpaid for NSF funds at the time of presentment. The Supreme Court noted that Kelly's secretary of six years, who handled his banking, left Kelly's employ and the financial problems followed as a result. The court also noted that there was no act of deceit involved in Kelly's misappropriation. Rather, "[T]he circumstances surrounding the Smyth matter indicate that [Kelly]'s failure to promptly remit the funds to Smyth, though inexcusable, was probably the result of [Kelly]'s negligent banking practices and a misunderstanding of his duties, rather than an intent to harm." (*Id.* at 519.) The Supreme Court granted Kelly considerable weight in mitigation for his 13 years of practice without prior discipline. The level of discipline imposed was one year of suspension, stayed, two years of probation, and six months actual suspension.

In the instant case, Respondent did not fail to remit client funds as Kelly did. However, Respondent did engage in willful misconduct related to his trust account, combined with a misrepresentation to a client, failures to perform and failures to refund unearned fees. Moreover, the circumstances in the instant case are similar to *Kelly* in that Respondent was forced to lay-off his secretary of 10 years, who assisted in his banking matters. In addition, where Kelly had 13 years of practice without discipline, Respondent has 18 years. Respondent is entitled to mitigation for his lengthy, discipline free, practice. Finally, where Kelly litigated his case all the way to the Supreme Court, Respondent has been cooperative with the State Bar throughout the process and by entering into this stipulation.

For the foregoing reasons, the appropriate level of discipline is: six months actual suspension, and until restitution is paid, one year stayed suspension, and two years of probation, together with the conditions set forth herein.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was March 13, 2013.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 8, 2013, the prosecution costs in this matter are approximately \$7,005. 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.

EXCLUSION FROM MCLE CREDIT


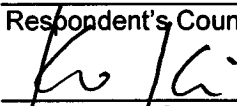
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of **State Bar Ethics School or State Bar Client Trust Accounting School.** (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: ANTONIO MUNOZ	Case number(s): 12-O-13177 - DFM, 12-O-14957, 12-O-16231 (unfiled), 12-O-16966 (unfiled), 12-O-17906 (unfiled)
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>04/10/2013</u> Date	<u></u> Respondent's Signature	<u>Antonio Munoz</u> Print Name
<u>4/10/2013</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Kim Kasrelievich</u> Print Name

(Do not write above this line.)

In the Matter of: ANTONIO MUNOZ	Case Number(s): 12-O-13177 - DFM, 12-O-14957, 12-O-16231 (unfiled), 12-O-16966 (unfiled), 12-O-17906 (unfiled)
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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.)**

Date

4/11/13


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 15, 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:

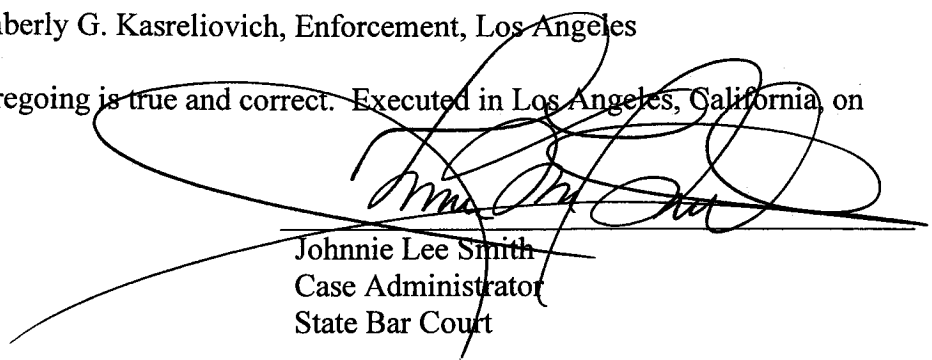
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ANTONIO MUNOZ
1265 N LA CADENA DR STE 2
COLTON, CA 92324

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

Kimberly G. Kasreliovich, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 15, 2013.



Johnnie Lee Smith
Case Administrator
State Bar Court