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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
Counsel For The State Bar  Meredith A. McKittrick 1149 South Hill Street Los Angeles, CA 90015 (213) 765-1204  Bar # 234484	Case Number(s): 12-O-14855	For Court use only  <div style="text-align: center;"> <b>FILED</b>   <b>JAN 17 2013</b>    <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b> </div>
Counsel For Respondent  Vicken Sonentz Papazian 517 E. Wilson Ave. Ste. 101 Glendale, CA 91206 (818) 956-7577  Bar # 153165	<b>PUBLIC MATTER</b>	
In the Matter of: Anthony N. Luti  Bar # 207852  A Member of the State Bar of California (Respondent)	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

**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 19, 2000.
- (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 14 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Effective January 1, 2011)



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (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: two (2) 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. See Attachment page 11.

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- (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 Attachment page 11.
- (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. See Attachment page 11.
- (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:**

See Attachment page 11.

**D. Discipline:**

- (1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of two (2) 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 (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 120 days.

- 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.**

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- ☐ 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:**

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In the Matter of: Anthony N. Luti	Case Number(s): 12-O-14855
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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

- ☐ 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:
- a. 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";

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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:                      Anthony N. Luti

CASE NUMBER(S):                      12-O-14855

**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-14855 (State Bar Investigation)

**FACTS:**

1. At all time relevant herein, Respondent maintained a client trust account at Bank of America designated account number \*\*\*\*\*-2092<sup>1</sup> ("Respondent's CTA").

2. Between January 2012 and August 2012, Respondent did not promptly remove funds which he had earned as fees from Respondent's CTA as soon as his interest in those funds became fixed. Instead Respondent left his fees in Respondent's CTA for the payment of his personal and business expenses as needed.

3. Between January 2012 and August 2012, Respondent repeatedly issued checks drawn upon Respondent's CTA to pay his personal and business expenses, including, but not limited to, the following:

<u>Check Number</u>	<u>Date Issued</u>	<u>Payee</u>	<u>Check Amount (\$)</u>	<u>Date Paid</u>
1367	2/7/12	Natalya Koroleva	2,200.00	2/14/12
1377	3/4/12	Natalya Koroleva	2,200.00	3/8/12
1385	3/28/12	Advanced Records Management	400.00	4/2/12
1387	4/2/12	Natalya Koroleva	2,200.00	4/4/12
1392	5/3/12	Natalya Koroleva	2,200.00	5/7/12
1395	5/6/12	Los Feliz Corners	1,000.00	5/10/12
1393	5/9/12	Los Angeles Clippers	450.00	Not paid
1401	6/5/12	Natalya Koroleva	2,200.00	6/6/12
1403	6/11/12	Dunbar Bradley	1,000.00	6/11/12
1406	6/20/12	Advanced Records Management	560.00	6/26/12
1408	6/26/12	Valley European Auto Service	5,545.60	6/27/12
1411	7/3/12	Natalya Koroleva	2,200.00	7/6/12
1418	7/15/12	Dunbar Bradley	15,000.00	7/16/12
1417	7/13/12	Los Angeles Clippers	2,200.00	7/19/12

<sup>1</sup> The full client trust account number has been omitted due to privacy concerns.

1421	7/24/12	Advanced Record	196.75	7/31/12
1423	8/1/12	Natalya	2,200.00	8/2/12

4. During the period between January of 2012 and August of 2012, Respondent repeatedly made withdrawals from Respondent's CTA to pay his personal and business expenses, including, but not limited to, the following:

<u>Withdrawal Date</u>	<u>Stated Purpose of Withdrawal</u>	<u>Withdrawal Amount (\$)</u>
5/4/12	Landrover Discovery	8,810.00
5/7/12	Boxster	2,000.00

5. During the period between January 2012 and August 2012, Respondent repeatedly made electronic payments from Respondent's CTA to pay his personal and business expenses, including, but not limited to, the following:

<u>Date Posted</u>	<u>Description</u>	<u>Amount (\$)</u>
1/6/12	T-Mobile	136.84
2/6/12	T-Mobile	161.89
2/7/12	Att	124.08
2/7/12	Att	127.94
3/5/12	T-Mobile	193.66
4/3/12	T-Mobile	191.25
5/16/12	T-Mobile	168.18
5/18/12	Att	122.35
5/18/12	Att	114.14
6/13/12	T-Mobile	163.98
6/22/12	Fpb Cr Card	425.51
6/25/12	Hsbc Card Svcs	405.06
7/12/12	Ladwp	383.86
7/16/12	T-Mobile	172.77
8/13/12	T-Mobile	194.44

6. In November 2010, Respondent was made aware of fraudulent debits by an unauthorized person from Respondent's CTA.

7. The fraudulent debits from Respondent's CTA continued intermittently from November 2010 through January 2012.

8. From January 2012 to August 2012, Respondent continued to deposit client funds into Respondent's CTA.

## CONCLUSIONS OF LAW:

9. By failing to promptly remove earned fees from his CTA and writing checks, making withdrawals, and causing electronic withdrawals from his CTA for personal and business expenses, Respondent deposited or commingled funds belonging to Respondent in a bank account labelled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of Rules of Professional Conduct, rule 4-100(A).

10. By continuing to deposit client funds into his CTA with knowledge that the CTA was subject to fraudulent debits by an unauthorized person Respondent breached his common law fiduciary duty to his clients, and thereby failed to support the Constitution and laws of the United States and of this state in willful violation of Business and Professions Code section 6068(a).

11. By continuing to deposit client funds into Respondent's CTA with knowledge that the CTA was subject to fraudulent debits by an unauthorized person, Respondent was grossly negligent in the handling of his client's funds, thus 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.

**Indifference:** In the face of his knowledge of the fraudulent debits from his CTA, and advice to close his CTA, Respondent continued to place client funds in his CTA. Respondent's failure to act to protect his client's funds despite clear knowledge of the problem and clear advice to act indicates significant indifference.

**Multiple/Pattern of Misconduct:** Respondent has been commingling since January 2012, and during that time period has written numerous checks, as well as making withdrawals and causing a number of electronic withdrawals, from his CTA for personal and business expenses. The commingling coupled with the gross negligence in handling client funds and the breach of fiduciary duty are multiple acts of misconduct.

## ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

**No Harm:** There is no evidence to suggest any client funds were lost as a result of the misconduct.

**Additional Mitigating Circumstances:** Respondent has entered into a stipulation before a Notice of Disciplinary Charges has been filed thereby saving the time and resources of the State Bar Court, and is receiving slight mitigation for doing so. (See *In the matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr 151,156; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190; see also *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079.)

Respondent has been admitted to the State Bar since June 19, 2000, for a period of over 12 years, and has no prior record of discipline. The lack of prior discipline is mitigating, notwithstanding that the present misconduct is serious. (See *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49; *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 12.)

## 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 Silverton* (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 violations of three specific provisions of the State Bar Act and the Rules of Professional Conduct. 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 2.2(b), which applies to Respondent's violation of Rules of Professional Conduct, rule 4-100(A).

Standard 2.2(b) provides that the range of discipline applicable to violations involving commingling or other violations of rule 4-100 that do not involve misappropriation at a minimum of a three month actual suspension, irrespective of mitigation circumstances.

In *Coppock v. State Bar* (1988) 44 Cal. 3d 665, the Supreme Court imposed discipline in the form of a two-year stayed suspension, two years' probation, and a ninety day actual suspension on an attorney who established a client trust account at the request of his client for the purpose of shielding the client's money from judgment creditors. The attorney then ceded total control of the account to the client for a period of approximately two years before closing the account and paying the funds to the client, ultimately resulting in the client defrauding others. The Court discussed and gave minimal weight to the following factors in mitigation: the attorney's lack of prior record as his time in practice was short, the attorneys claimed emotional difficulties, and lack of harm to clients. The Court further discussed in mitigation the attorney's good faith, good character, cooperation and remorse, but found the mitigating factors did not render the discipline excessive.

In *Kelly v. State Bar* (1991) 53 Cal. 3d 509, the Supreme Court imposed discipline in the form of a three-year stayed suspension, three years' probation, and a 120 day actual suspension on an attorney as a result of misconduct in two client related matters. In the first client matter the attorney received funds from a client intended to pay a settlement, but did not deposit those funds into his client trust account, commingled those funds, and failed to promptly appropriately pay out the funds. In the second client

matter the attorney failed to promptly pay out the proceeds of an airplane sale, and misappropriated a portion of those funds. In mitigation, the Court considered the lack of serious harm to the clients, the attorney's lack of wrongful intent, and his 13 years in practice without any prior imposition of discipline. The Court, however, considered the attorney's misconduct "serious and inexcusable" concluding, in light of the mitigation, that a 120-day actual suspension was necessary.

*Coppock* is informative on the issue of level of discipline insofar as that case involved fraud in the use of a CTA over an extended period of time, however, Coppock ceded control of his CTA to a client, while Respondent here continued to actively use his CTA despite knowledge of the potential for fraudulent activity. But, in this matter the appropriate level of discipline should fall in line with that imposed in *Kelly*. Unlike *Kelley*, there is no evidence Respondent here either failed to pay promptly or misappropriated client funds. Instead Respondent engaged in an extended period of commingling accompanied by gross negligence and breach of fiduciary duties in handling client funds through his continued use of a CTA subject to fraudulent debits. The facts of the current matter, coupled with the significant aggravation in Respondent's demonstrated indifference justifies discipline in line with *Kelly*.

#### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was December 28, 2012.

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

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 28, 2012, the prosecution costs in this matter are \$2,865.00. 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**

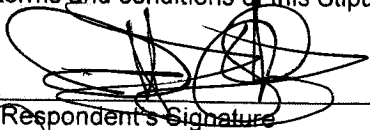


Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and / or any other educational course(s) to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: Anthony N. Luti	Case number(s): 12-O-14855
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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>28 DEC 12</u> Date	 Respondent's Signature	<u>Anthony N. Luti</u> Print Name
<u>12-28-12</u> Date	 Respondent's Counsel Signature	<u>Vicken Sonentz Papazian</u> Print Name
<u>12/28/12</u> Date	 Deputy Trial Counsel's Signature	<u>Meredith A. McKittrick</u> Print Name

(Do not write above this line.)

In the Matter of:  
Anthony N. Luti

Case Number(s):  
12-O-14855

### 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

1-11-13

  
GEORGE E. SCOTT, JUDGE PRO TEM  
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 January 17, 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:

VICKEN SONENTZ-PAPAZIAN  
517 E. WILSON AVE., STE. 101  
GLENDALE, CA 91206

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

MEREDITH MCKITTRICK, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 17, 2013.



Angela Carpenter  
Case Administrator  
State Bar Court