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State Bar Court of California Hearing Department Los Angeles DISBARMENT		
Counsel For The State Bar Kimberly G. Anderson Senior Trial Counsel Office of the Chief Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 Telephone: (213) 765-1083 Bar # 150359	Case Number(s): 15-O-11645-YDR 15-O-12179-YDR	For Court use only <div style="text-align: center;"> FILED DEC 16 2015 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent Daniel Isaac Wagner 11551 Santa Monica Blvd., PH 1 Los Angeles, CA 90025 Bar # 195610	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: DANIEL ISAAC WAGNER Bar # 195610 A Member of the State Bar of California (Respondent)		

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 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.
- (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."

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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs to be awarded to the State Bar.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.
- (9) **ORDER OF INACTIVE ENROLLMENT:**
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (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:

See Stipulation Attachment at page 11.
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.
- (7) **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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- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Lack of Candor/Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See Stipulation Attachment at pages 11-12.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. 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 likely to recur.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Lack of Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 with a good faith belief that was honestly held and objectively reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

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- (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 extraordinarily 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 subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pre-Trial Stipulation - See Stipulation Attachment at page 12.

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D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (2) **Restitution:** Respondent must make restitution to **VisionQwest Accountancy Group** in the amount of \$ **9,930** plus 10 percent interest per year from **February 26, 2015**. If the Client Security Fund has reimbursed **VisionQwest Accountancy Group** for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than days from the effective date of the Supreme Court order in this case.

- (3) **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DANIEL ISAAC WAGNER

CASE NUMBERS: 15-O-11564 -YDR and 15-O-12179 - YDR

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. 15-O-11645-YDR (Complainant: Jeffrey P. Cunningham, Esq.)

FACTS:

1. On January 31, 2013, Respondent filed a lawsuit on behalf of Wilson Perry ("Perry") in the case entitled *Wilson Dante Perry vs. Bakewell Hawthorne LLC*, Los Angeles Superior Court Case No. BC50098 ("the lawsuit").
2. Effective September 27, 2013, Respondent was disciplined in State Bar Court Case No. 12-O-11175 et al. Respondent received a two-year stayed suspension and two years' probation with conditions, including among other conditions:
 - that Respondent be actually suspended for the first six months of his probation,
 - that Respondent take and pass the MPRE within one year of the effective date of his discipline, and
 - that Respondent comply with the State Bar Act and the Rules of Professional Conduct during his disciplinary probation.
3. Respondent served his six-month suspension and had another attorney substitute into the lawsuit during his disciplinary suspension in State Bar Court Case No. 12-O-11175 et al.
4. On January 26, 2015, Respondent was again suspended and he continues to remain suspended due to his failure to take and pass the MPRE. At all times between January 26, 2015 and the present, Respondent has had actual knowledge of his suspension due to his failure to take and pass the MPRE.
5. On February 17, 2015, while he was suspended Respondent filed an Ex Parte Motion on behalf of his client Perry in the lawsuit. In the moving papers, Respondent identified himself as an attorney. Respondent also appeared at the hearing on the motion and argued the motion. Respondent knew he was suspended at all times on February 17, 2015.
6. On February 19, 2015, while he was suspended Respondent filed a second Ex Parte Motion on behalf of his client Perry in the lawsuit. In the moving papers, Respondent identified himself as an

attorney. Respondent also appeared at the hearing on the motion and argued the motion. Respondent knew he was suspended at all times on February 19, 2015.

7. Respondent was on disciplinary probation pursuant to the court order in State Bar Court Case No. 12-O-11175 et al. on February 17, 2015 and February 19, 2015.

8. On March 19, 2015, the State Bar opened an investigation in Case No. 15-O-11645 concerning allegations relating to Respondent's unauthorized practice of law in the lawsuit on February 17, 2015 and February 19, 2015.

9. On April 4, 2015, Respondent filed his April 10, 2015 Quarterly Report with the Office of Probation of the State Bar of California ("Office of Probation") falsely attesting under penalty of perjury that he had complied with the State Bar Act, when he knew that he had engaged in the unauthorized practice of law on February 17, 2015 and February 19, 2015 as outlined above.

10. On April 22, 2015, a State Bar Investigator ("the Investigator") sent Respondent a letter asking for a written response to the allegations. Respondent received the letter.

11. On May 7, 2015, Respondent telephonically contacted the Investigator and requested an extension of time to respond to the allegations. The extension was granted. On May 7, 2015, the Investigator sent Respondent a letter granting the extension. Respondent received the letter.

12. On May 27, 2015, the Investigator received a fax letter from Respondent requesting another three week extension of time to respond to the Investigator's letters.

13. On June 2, 2015, the Investigator sent Respondent a letter granting the three-week extension. Respondent received the letter.

14. On June 11, 2015, Respondent called the Investigator and again requested copies of the Investigator's letters in reference to Case No. 15-O-11645. On June 11, 2015, the Investigator sent copies of the letters to Respondent. Respondent received the copies of the letters, but Respondent did not respond to the letters or provide any substantive response.

CONCLUSIONS OF LAW:

15. By holding himself out as entitled to practice law and by actually practicing law on February 17, 2015 and on February 19, 2015 when Respondent was not an active member of the State Bar, and by filing on each date an ex parte motion wherein he identified himself as an attorney on behalf of his client Perry in the case entitled *Wilson D. Perry v. Bakewell Hawthorne, LLC*, Los Angeles County Superior Court Case No. BC500198, and by thereafter appearing at the hearings on each of the ex parte motions, in violation of Business and Professions Code, sections 6125 and 6126, Respondent thereby willfully violated Business and Professions Code, section 6068(a).

16. By holding himself out as entitled to practice law and by actually practicing law on February 17, 2015 and on February 19, 2015 when Respondent knew he was not an active member of the State Bar, and by filing on each date an ex parte motion wherein he identified himself as an attorney on behalf of his client Perry in the case entitled *Wilson D. Perry v. Bakewell Hawthorne, LLC*, Los Angeles County Superior Court Case No. BC500198, and by thereafter appearing at the hearings on each of the

ex parte motions, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

17. By failing to comply with the State Bar Act by engaging in the unauthorized practice of law and holding himself out as entitled to practice law on February 17, 2015 and on February 19, 2015 in violation of Business and Professions Code sections 6068(a), 6125 and 6126, when he filed two ex parte motions indicating he was the attorney for Wilson Perry in the case entitled *Wilson D. Perry v. Bakewell Hawthorne, LLC*, Los Angeles County Superior Court Case No. BC500198; and by failing to comply with the State Bar Act by committing acts of moral turpitude in violation of Business and Professions Code section 6106 on February 17, 2015 and on February 19, 2015, when Respondent held himself out as entitled to practice law and actually practiced law when Respondent knew he was not an active member of the State Bar by filing two Ex Parte Motions on behalf of his client Perry in the case entitled *Wilson D. Perry v. Bakewell Hawthorne, LLC*, Los Angeles County Superior Court Case No. BC500198, Respondent failed to comply with conditions attached to Respondent's disciplinary probation in State Bar Case No. 12-O-11175 et al., in willful violation of Business and Professions Code, section 6068(k).

18. By filing a Quarterly Report with the Office of Probation of the State Bar of California with respect to his disciplinary probation in State Bar Case No. 12-O-11175 et al. falsely stating that he had complied with the State Bar Act when Respondent knew that he had not complied with the State Bar Act during the Quarterly Report period, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

19. By failing to provide a substantive response to the State Bar Investigator's letters of April 22, 2015, May 7, 2015 and June 2, 2015, which Respondent received, 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. 15-O-12179 - YDR (Complainant: Michael Lodge)

FACTS:

20. Effective September 27, 2013, Respondent was disciplined in State Bar Court Case No. 12-O-11175 et al. Respondent received a two-year stayed suspension and two years' probation with conditions, including among other conditions:

- that Respondent be actually suspended for the first six months of his probation,
- that Respondent take and pass the MPRE within one year of the effective date of his discipline, and
- that Respondent comply with the State Bar Act and the Rules of Professional Conduct during his disciplinary probation.

21. Respondent served his six-month suspension in in State Bar Court Case No. 12-O-11175 et al.

22. On January 26, 2015, Respondent was again suspended and he continues to remain suspended due to his failure to take and pass the MPRE. At all times between January 26, 2015 and the

present, Respondent has had actual knowledge of his suspension due to his failure to take and pass the MPRE.

23. On February 27, 2015, while he was suspended Respondent entered into a retainer agreement to represent Michael Joseph Cabuhat ("Cabuhat") and VisionQwest Accountancy Group ("VisionQwest") in a civil lawsuit filed against them by a former client in the case entitled *Hans G. D. Laursen D. O. vs. Vision Qwest Accountancy Group et al.*, Los Angeles Superior Court Case No. BC573238. Respondent charged and collected a total of \$9,930 in legal fees. The retainer agreement expressly indicated Respondent was an attorney. Respondent never told Cabuhat or VisionQwest that he was not entitled to practice law at any time between February 27, 2015, and March 20, 2015, when he was confronted by Michael Lodge ("Lodge"), the President and Chief Executive Officer of VichionQwest about Respondent's suspension from practicing law. Respondent emailed the clients legal advice during the time period between February 27, 2015 and March 20, 2015, and discussed the matter with opposing counsel, although Respondent did not file any pleadings or make any court appearances.

24. On March 20, 2015, Lodge emailed Respondent and terminated his services as a result of having learned of Respondent's not-entitled status.

25. Respondent was on disciplinary probation pursuant to the court order in State Bar Court Case No. 12-O-11175 et al. between February 27, 2015 and March 20, 2015.

26. On April 13, 2015, the State Bar opened an investigation in State Bar Case No. 15-O-12179 concerning the allegations made by Lodge against Respondent.

27. On April 4, 2015, Respondent filed his April 10, 2015 Quarterly Report with the Office of Probation of the State Bar of California ("Office of Probation") in State Bar Court Case No. 12-O-11175 et al. falsely attesting under penalty of perjury that he had complied with the State Bar Act and the Rules of Professional Conduct, when he knew that he had engaged in the unauthorized practice of law and charged illegal fees between February 27, 2015 and March 20, 2015.

28. On June 8, 2015, a State Bar Investigator ("the Investigator") sent Respondent a letter asking for a written response to the allegations. Respondent received the letter but did not provide a response to it.

29. On June 23, 2015, the Investigator sent Respondent a second letter asking for a written response to the allegations. Respondent received the letter but did not respond to it. To date, Respondent has failed to provide a substantive written response to the Investigator's letters.

CONCLUSIONS OF LAW:

30. By entering into a retainer agreement with his clients Cabuhat and VisionQwest on February 27, 2015, which stated that he was an attorney and that he would defend Cabuhat and VisionQwest in the case entitled *Hans Laursen v. VisionQwest Accountancy Group et al.*, Los Angeles County Superior Court Case No. BC573238, by thereafter rendering legal advice to Cabuhat and VisionQwest between February 27, 2015 and March 20, 2015, and by and engaging in settlement discussions with counsel for the opposing party without notifying Cabuhat, VisionQwest or the opposing counsel that he was not entitled to practice law until on or about March 20, 2015, Respondent held himself out as entitled to practice law and actually practiced law when Respondent was not an active member of the State Bar in

violation of Business and Professions Code, sections 6125 and 6126, and thereby willfully violated Business and Professions Code, section 6068(a).

31. By entering into a retainer agreement with his clients Cabuhat and VisionQwest on February 27, 2015, which stated that he was an attorney and that he would defend Cabuhat and VisionQwest in the case entitled *Hans Laursen v. VisionQwest Accountancy Group et al.*, Los Angeles County Superior Court Case No. BC573238, by thereafter rendering legal advice to Cabuhat and VisionQwest between February 27, 2015 and March 20, 2015, and by and engaging in settlement discussions with counsel for the opposing party without notifying Cabuhat, Lodge, VisionQwest or the opposing counsel that he was not entitled to practice law until on or about March 20, 2015, when Respondent in fact knew he was not entitled to practice law, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

32. By contracting for, charging and collecting \$9,930 in fees from Cabuhat and VisionQwest to perform legal services while he was not entitled to practice law, Respondent contracted for, charged and collected an illegal fee in willful violation of Rules of Professional Conduct, rule 4-200(A).

33. By failing to comply with the State Bar Act by engaging in the unauthorized practice of law and holding himself out as entitled to practice law between February 27, 2015 and March 20, 2015 in violation of Business and Professions Code sections 6068(a), 6125 and 6126, when he entered into a retainer agreement with his clients Cabuhat and VisionQwest on February 27, 2015, which stated that he was an attorney and that he would defend Cabuhat and VisionQwest in the case entitled *Hans Laursen v. VisionQwest Accountancy Group et al.*, Los Angeles County Superior Court Case No. BC573238, and by thereafter rendering legal advice to Cabuhat and VisionQwest and engaging in settlement discussions with counsel for the opposing party without notifying Cabuhat, VisionQwest or the opposing counsel that he was not entitled to practice law until on or about March 20, 2015; by failing to comply with Rule 4-200(A) of the Rules of Professional Conduct by entering into an agreement with his clients Cabuhat and VisionQwest whereby he contracted for, charged and collected from them \$9,930 to perform legal services, and where the fee agreement and the fees were illegal because Respondent was not entitled to practice law at the time he entered into the agreement with Cabuhat and VisionQwest, and because Respondent received the \$9,930 in legal fees for legal work he performed between February 27, 2015 and March 20, 2015 when he was not entitled to practice law; and by failing to comply with the State Bar Act by committing acts of moral turpitude in violation of Business and Professions Code section 6106 between February 27, 2015 and March 20, 2015, when Respondent held himself out as entitled to practice law and actually practiced law when Respondent knew he was not an active member of the State Bar by entering into a retainer agreement with his clients Cabuhat and VisionQwest on February 27, 2015, which stated that he was an attorney and that he would defend Cabuhat and VisionQwest in the case entitled *Hans Laursen v. VisionQwest Accountancy Group et al.*, Los Angeles County Superior Court Case No. BC573238, and by thereafter rendering legal advice to Cabuhat and VisionQwest and engaging in settlement discussions with counsel for the opposing party without notifying Cabuhat, VisionQwest or the opposing counsel that he was not entitled to practice law until March 20, 2015, Respondent failed to comply with conditions attached to Respondent's disciplinary probation in State Bar Case No. 12-O-11175 et al. as follows, in willful violation of Business and Professions Code, section 6068(k).

34. By filing a Quarterly Report with the Office of Probation of the State Bar of California with respect to his disciplinary probation in State Bar Case No. 12-O-11175 et al. falsely stating that he had complied with the State Bar Act when Respondent knew that he had not complied with the State Bar Act

during the Quarterly Report period, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

35. By failing to provide a substantive response to the State Bar Investigator's letters of June 8, 2015 and June 23, 2015, which Respondent received, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in willful violation of Business and Professions Code, section 6068(i).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)):

Respondent has the following two prior records of discipline:

Effective September 27, 2013, Respondent was disciplined in Supreme Court Case No. S211552 (State Bar Court Case Nos. 12-O-11175 et al.). Respondent received a two-year stayed suspension and two years' probation with conditions, including among other conditions, that Respondent be actually suspended for the first six (6) months of his probation. The misconduct occurred between approximately August 2010 and March 2013 in five different client matters. In four of the client matters, Respondent violated Business and Professions Code section 6106.3 by charging advanced fees to perform loan modification services. In the fifth matter, Respondent violated Business and Professions Code section 6103 and Rule 3-110(A) of the Rules of Professional Conduct in a Chapter 7 Bankruptcy proceeding. In aggravation, Respondent was found to have a prior record of discipline and to have committed multiple acts of misconduct. Respondent received mitigation for entering into a pretrial stipulation.

Effective May 14, 2011, Respondent was disciplined in Supreme Court Case No. S190343 (State Bar Court Case No. 09-O-17754.). Respondent received a two-year stayed suspension and two years' probation with conditions, including among other conditions, that Respondent be actually suspended for the first ninety (90) days of his probation. The misconduct occurred in a single matter and involved failing to maintain entrusted funds on behalf of a client and commingling, both violations of Rule 4-100(A) of the Rules of Professional Conduct. The misconduct occurred between February 2009 and May 2009.

Multiple Acts of Misconduct (Std. 1.5(b)):

Respondent's misconduct involves eleven counts of misconduct in two separate client matters.

In the first matter, Case No. 15-O-11645, Respondent practiced law and intentionally held himself out as entitled to practice law when he knew he was not entitled to practice law on February 17, 2015 and February 19, 2015. Respondent also violated the terms of his disciplinary probation in Case No. 12-O-11175 et al. Thereafter, Respondent filed his April 10, 2015 Quarterly Report on April 4, 2015, concealing the underlying probation violations. Thereafter, Respondent failed to cooperate in the disciplinary investigation by failing to provide any substantive response to the Investigator's letters of April 22, 2015, May 7, 2015 and June 2, 2015.

In the second matter, Case No. 15-O-12179, Respondent practiced law and intentionally held himself out as entitled to practice law when he knew he was not entitled to practice law between February 27, 2015 and March 20, 2015. Respondent also contracted for, charged and collected illegal fees from his

clients. Respondent also violated the terms of his disciplinary probation in Case No. 12-O-11175 et al. Thereafter, Respondent filed his April 10, 2015 Quarterly Report on April 4, 2015, concealing the underlying probation violations. Thereafter, Respondent failed to cooperate in the disciplinary investigation by failing to provide any substantive response to the Investigator's letters of June 8, 2015, and June 23, 2015.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Respondent entered into a Pretrial Stipulation in these matters, thereby saving the State Bar's time and resources in having to prosecute this matter. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, Respondent admits to committing eleven acts of professional misconduct. Standard 1.7(a) requires that where a Respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

The most severe sanction applicable to Respondent's misconduct is found in Standard 2.11, which applies to Respondent's violations of Business and Professions Code section 6106. Standard 2.11 provides that

Disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law.

The Respondent committed four separate acts of moral turpitude, when he intentionally held himself out to his each of his clients in the two matters above, and when he made misrepresentations to the State Bar's Office of Probation in April 2015. These acts evidence Respondent's willingness to make intentional misrepresentations in many contexts, including to the Office of Probation of the State Bar, to the courts, his clients and opposing counsel. Each of these instances, as well as the other instances of charged misconduct related to the practice of law.

"Part B. Sanctions for Specific Misconduct" of the Standard for Attorney Sanctions for Professional Misconduct states, "[t]he presumed sanction for any specific act of misconduct is a starting point for the imposition of discipline, but can be adjusted up or down depending on the application of mitigating and aggravating circumstances set forth in Standards 1.5 and 1.6, and the balancing of these circumstances as described in Standard 1.7(b) and (c)."

There are at least two significant aggravating factors and two mitigating factors. The significance of the aggravating factors outweigh the mitigation. Thus, discipline should be in the higher range of that indicated in Standard 2.11. Disbarment is warranted based upon a consideration of Standard 2.11, the two aggravating factors, and Standard 1.8(b).

Standard 1.8(b) states, in pertinent part:

If a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:

1. Actual suspension was ordered in any one of the prior disciplinary matters;
2. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or
3. The prior disciplinary matters coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities. ...

Respondent's prior record of discipline is a significant aggravating factor and the court should apply Standard 1.8(b) and order Respondent's disbarment. There is no compelling mitigation here. Respondent's two prior records of discipline both involved imposition of actual suspensions of 90 days and 6 months, respectively. The prior record of discipline, coupled with the current record also demonstrated Respondent's unwillingness or inability to conform to ethical responsibilities. Specifically, as stated above, Respondent's current misconduct evidences his willingness to make intentional misrepresentations in many different contexts. To the extent Respondent has made

misrepresentation to the Office of Probation in his April 10, 2015 Quarterly Report, this evidences Respondent's inability to comply with and be adequately supervised on probation. The Office of Probation does rely at least in part on an attorney's candor in Quarterly Reports in order to monitor the attorney. Respondent's misrepresentations hinder the Office of Probation's ability to monitor him. There is also no excuse for Respondent's failure to cooperate in the investigation in this matter, which is his third disciplinary matter. Respondent knew about the investigation and requested and received extensions within which to provide a substantive written response to the investigator. This evidences an inability or unwillingness to conform to ethical responsibilities.

The Respondent's prior discipline record also established that Respondent has been committing misconduct and/or has been under the supervision of the discipline system from at least February 2009 to the present, more than six and a half years. Respondent was on disciplinary probation for his first disciplinary matter when he committed some of the misconduct in his second disciplinary matter. Similarly, Respondent was on disciplinary probation for his second disciplinary matter when he committed to misconduct in the current matter. The probation violations, coupled with the violation of the court order suspending him from practicing law, and the knowing and intentional failure to cooperate in the disciplinary investigation requires that Respondent be disbarred.

In the Matter of Thomas Thomson (Review Dept. 2006) 4 Cal State Bar Ct. Rptr. 966 also provides some guidance as to the appropriate sanction in this case. In *Thomson*, the Review Department recommended the disbarment of an attorney who had four prior records of discipline. In *Thomson*, the Review Department applied former Standard 1.7(b), based upon the fact that the respondent in that case had two or more prior records of discipline involving a common thread of misconduct, including probation violations, violation of court orders and engaging in the unauthorized practice of law.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of September 2, 2015, the prosecution costs in this matter are approximately \$8,409. 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

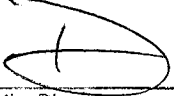
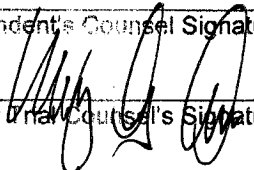
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course(s) to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: DANIEL ISAAC WAGNER	Case number(s): 15-O-11645-YDR and 15-O-12179-YDR
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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>12/3/15</u> Date	 Respondent's Signature	<u>DANIEL I. WAGNER</u> Print Name
<u>12/7/15</u> Date	 Deputy Trial Counsel's Signature	<u>KIMBERLY G. ANDERSON</u> Print Name

(Do not write above this line.)

In the Matter of:
DANIEL ISAAC WAGNER

Case Number(s):
15-O-11645-YDR and 15-O-12179-YDR

DISBARMENT ORDER

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

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

See attached Modifications to Stipulation.

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

Respondent Daniel Isaac Wagner is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

December 10, 2015
Date

W. Kearse McGill
W. KEARSE MCGILL
Judge of the State Bar Court

In the Matter of:
DANIEL ISAAC WAGNER

Case Number(s):
15-O-11645-YDR and 15-O-12179-YDR

MODIFICATIONS TO STIPULATION

On page 1 of the stipulation, in the case heading the word “Consolidated” is INSERTED after the case numbers.

On page 1 of the stipulation, in paragraph A(3), in the last line, the number “16” is CHANGED to the number “15.”

On page 5 of the stipulation, in paragraph E(2) the last sentence, which begins “Respondent must pay...,” is DELETED in its entirety.

On page 8 of the stipulation, at the end of paragraph number 17, the following sentence is INSERTED:

The foregoing violations of Business and Professions Code section 6068, subdivision (k) are duplicative of the violations of Business and Professions Code sections 6125, 6126, 6068, subdivision (a), and 6106 found *ante* in paragraph numbers 15 and 16. Accordingly, the section 6068, subdivision (k) violations are not given any additional weight for purposes of determining the appropriate level of discipline.

On page 10 of the stipulation, at the end of paragraph number 33, the following sentence is INSERTED:

The foregoing violations of Business and Professions Code section 6068, subdivision (k) are duplicative of the violations of Business and Professions Code sections 6125, 6126, 6068, subdivision (a), and 6106 and State Bar Rules of Professional Conduct, rule 4-200(A) found *ante* in paragraph numbers 30, 31, and 32. Accordingly, the section 6068, subdivision (k) violations are not given any additional weight for purposes of determining the appropriate level of discipline.

On page 14 of the stipulation, the paragraph entitled “Exclusion from MCLE Credit,” is DELETED in its entirety.

-x-x-x

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 16, 2015, 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:

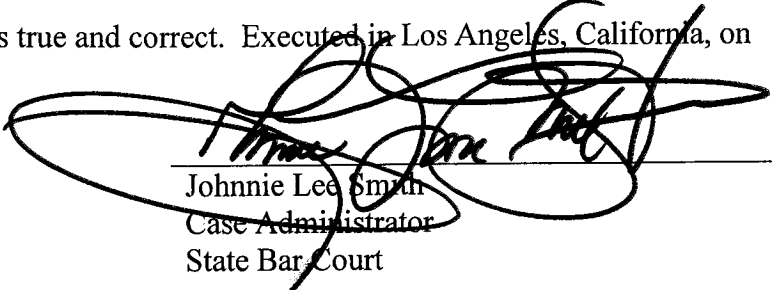
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DANIEL I. WAGNER
1875 CENTURY PARK E
LOS ANGELES, CA 90067**

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

KIMBERLY G. ANDERSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 16, 2015.



Johnnie Lee Smith
Case Administrator
State Bar Court