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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		
Counsel For The State Bar Sherell N. McFarlane Senior Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017 (213) 765-1288 Bar # 217357	Case Number(s): 15-O-14084	For Court use only <div style="text-align: center;"> FILED MAY 05 2016 <i>MC</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent Lee Alan Gross P.O. Box 6361 Irvine, CA 92616 (949) 856-1445 Bar # 153412	PUBLIC MATTER	
In the Matter of: LEE ALAN GROSS Bar # 153412 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <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 11, 1991**.
- (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 **13** 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):
- ☒ Costs are added to membership fee for calendar year following effective date of discipline.
 - ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.

B. Aggravating Circumstances [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 **14-O-00303, et al.**
 - (b) ☒ Date prior discipline effective **January 15, 2016**
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Twenty counts of violating rule 1-300(B) of the Rules of Professional Conduct and twenty counts of violating rule 4-200(A) of the Rules of Professional Conduct.**
 - (d) ☒ Degree of prior discipline **Three years suspension, stayed, three years of probation with conditions including actual suspension for eighteen months, payment of restitution, and Ethics School; compliance with rule 9.20 of the California Rules of Court; and Multistate Professional Responsibility Examination requirement.**
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (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.

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- (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..
- (8) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See Attachment to Stipulation at pages 9-10.**
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **Candor/Lack of 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.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☒ **Restitution:** Respondent failed to make restitution. See Attachment to Stipulation at pages 9-10.
- (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) ☐ **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

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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.

- (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

Pretrial Stipulation. See Attachment to Stipulation at page 10.

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 fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), 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:

The above-referenced suspension is stayed.

- (2) ☒ **Probation:**

Respondent is placed on probation for a period of **one (1) year**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

- (1) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) ☒ 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.

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- (3) ☒ 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.
- (4) ☒ 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.

- (5) ☐ 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.
- (6) ☒ 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.
- (7) ☐ 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 State Bar Ethics School, and passage of the test given at the end of that session.
- ☒ No Ethics School recommended. Reason: **Respondent is required to complete Ethics School as part of his discipline in case no. 14-O-00303, et al..**
- (8) ☐ 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.
- (9) ☒ 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 within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

☒ No MPRE recommended. Reason: **Respondent is required to complete the MPRE as part of his discipline in case no. 14-O-00303, et al.**

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In the Matter of: Lee Alan Gross	Case Number(s): 15-O-14084
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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
Luc and Christian Francois	\$3,495	October 30, 2013

- ☐ 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: LEE ALAN GROSS

CASE NUMBER: 15-O-14084

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-14084 (Complainants: Luc Francois and Christian Francois)

FACTS:

1. On December 27, 2011, State Trust Legal, Inc. ("STL") was established as a California Corporation and is controlled owned and operated by respondent, Lee Alan Gross.

2. At all relevant times herein, respondent provided legal services through STL by supervising a non-attorney staff that completed and submitted home mortgage loan modification applications on behalf of his clients to the clients lender seeking to obtain a modification or adjustment of the client's home mortgage loans.

3. At all times relevant herein, Luc and Christian Francois were residents of Massachusetts.

4. At all times relevant herein, respondent was not licensed to practice law in Massachusetts.

5. Massachusetts Rules of Professional Conduct, rule 5.5(b)(2) states, in relevant part, that "a lawyer who is not admitted to practice in this jurisdiction shall not...(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction."

6. Massachusetts General Laws, Chap. 221, § 46A-46C provides in relevant part, "[n]o individual, other than a member, in good standing, of the bar of this commonwealth shall practice law, or, by word, sign, letter, advertisement or otherwise, hold himself out as authorized, entitled, competent, qualified or able to practice law."

7. In August 2013, Luc and Christian Francois received an advertisement from STL offering to perform mortgage loan modification services. In response to the advertisement, Luc and Christian Francois contacted STL to discuss their mortgage loan modification services.

8. On August 27, 2013, Luc and Christian Francois retained STL to perform mortgage loan modification services regarding their home located in Massachusetts. STL knew the clients and their home were located in Massachusetts, and the clients believed STL and its attorneys were entitled to practice law in Massachusetts. Luc and Christian Francois agreed to pay STL a flat fee of \$3,495 which would be deposited into STL's client trust account and held in trust until STL completed a phase of the legal services, as defined in the "Engagement Letter," at which time a portion of the fees corresponding

to the completed phase would be withdrawn by STL as “earned fees.” Additional portions of the fees would be withdrawn as “earned fees” as each successive phase of the mortgage loan modification services was performed until the entire fee was withdrawn by STL.

9. Between August 30, 2013 and October 30, 2013, Luc and Christian Francois paid respondent \$3,495 in attorney fees.

10. To date, respondent has failed to make restitution to Luc and Christian Francois.

CONCLUSIONS OF LAW:

11. By soliciting employment through advertisement to Massachusetts residents, by advising Massachusetts resident Luc and Christian Francois of their legal rights and options regarding a mortgage loan modification, by accepting employment with Luc and Christian Francois and by performing legal services in connection with negotiating and obtaining a mortgage loan modification for Luc and Christian Francois when to do so was in violation of the laws and regulations of the legal profession in Massachusetts, respondent held himself out as entitled to practice law and practiced law in willful violation of the Rules of Professional Conduct, rule 1-300(B).

12. By entering into an agreement for, charging and collecting fees of \$3,495 from Luc and Christian Francois to perform legal services in Massachusetts, where respondent is not entitled to practice law, respondent entered into an agreement for, charged and collected an illegal fee for legal services that constituted the unlawful practice of law, in willful violation of the Rules of Professional Conduct, rule 4-200(A).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has one prior record of discipline. In July 2015, respondent stipulated to forty counts of misconduct – twenty counts involving a violation of rule 1-300(B) of the Rules of Professional Conduct and twenty counts involving a violation of rule 4-200(A) of the Rules of Professional Conduct – in twenty matters for out-of-state clients who sought mortgage loan modification services for loans on properties located in their home jurisdictions of South Carolina, Michigan, Texas, New York, Georgia, Illinois, Massachusetts and Florida. In each matter respondent stipulated to charging and collecting an illegal fee from clients, between June 2013 and May 2014, for legal services in a foreign jurisdiction where respondent was not admitted to practice law or otherwise entitled to practice law or hold himself out as entitled to practice law. Respondent’s conduct was aggravated by harm to his clients, multiple acts of misconduct and failure to pay restitution. Respondent received credit in mitigation for no prior record of discipline over twenty-two year of practice and pretrial stipulation. Pursuant to Supreme Court Order S229786 effective on January 15, 2016 (“Order”), respondent was suspended from the practice of law for three years, stayed, and placed on probation for three years with conditions including actual suspension for eighteen months and the requirements that he make restitution and successfully complete Ethics School. The Order also required respondent to comply with California Rules of Court, rule 9.20 and take and pass the Multistate Professional Responsibility Examination.

Harm to Clients (Std. 1.5(j)): Respondent’s misconduct caused significant financial harm to the out-of-state clients in this matter who hired respondent because they needed representation for a loan modification and were facing the risk of the loss of their home. The deprivation and loss of the use of

the funds paid to respondent by the clients, who were financially vulnerable and who had to hire replacement counsel, caused significant financial harm to them.

Failure to Make Restitution (Std. 1.5(m)): Respondent has failed to make restitution to Luc and Christian Francois. (*In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 417 [failure to make restitution to a client is an aggravating factor]).)

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Respondent has stipulated to facts, conclusions of law, and disposition in order to resolve this disciplinary proceedings prior to the filing of disciplinary charges, thereby avoiding the necessity of a formal proceeding and the resulting trial, and saving State Bar and State Bar Court time and resources. (*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]).) By entering into this stipulation, respondent has accepted responsibility for his misconduct.

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 two 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 2.3(b),¹ which applies to respondent's violation of rule 4-200(A) of the Rules of Professional Conduct. Standard 2.3(b) provides that "[s]uspension or reproof is the presumed sanction for entering into an agreement for, charging, or collecting an illegal fee for legal services." Between August 2013 and April 2014, respondent held himself out as entitled to practice law to Luc and Christian Francois who were residents of Massachusetts. Rule 4-200(A) provides that "[a] member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee." By offering to perform and performing mortgage loan modification legal services, respondent entered into an agreement for, charged and collected fees from Luc and Christian Francois in violation of rule 4-200(A).

Because respondent held himself out as entitled to practice law in Massachusetts, the fees respondent charged and collected from Luc and Christian Francois were illegal under rule 4-200(A). (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 904 [attorney not entitled to recover fees for UPL committed in violation of rule 1-300(B) and ordered to refund fees].) Therefore, it is unnecessary to inquire whether any of the services respondent provided was of value to Luc and Christian Francois, and none of the fees were earned.

Respondent is entitled to mitigation for entering into this stipulation. However, respondent's mitigation is outweighed by three aggravating circumstances, to wit, a prior record of discipline, significant client harm and the failure to make restitution. Respondent's prior record of discipline necessitates further analysis in light of Standard 1.8(a). Standard 1.8(a) provides that: "If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust." Respondent's prior discipline is both recent and serious.

However, on the facts of this case, Standard 1.8(a) must be applied in conformity with the holding by the Review Department in *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. *Sklar* instructs that the aggravating force of the prior discipline is generally diminished if the misconduct in the current matter occurred contemporaneously with the misconduct that gave rise to the prior record of discipline. (*Id.* a p. 619.) "Since part of the rationale for considering prior discipline as having an aggravating impact is that it is indicative of a recidivist attorney's inability to conform his or her conduct to ethical norms [citation], it is therefore appropriate to consider the fact that the misconduct involved here was contemporaneous with the misconduct in the prior case." (*Id.*) Therefore, the totality of the misconduct in both the prior discipline and the current matter must be considered in order to determine the appropriate discipline, had both cases been brought together. (*Id.*)

The current matter involves misconduct that is identical to the misconduct found in the prior discipline. In the prior matter, respondent was found culpable for violations of rules 1-300(B) and 4-200(A) of the Rules of Professional Conduct by agreeing to perform legal services for, accepting fees from and performing legal services for clients who were residents in jurisdictions in which he was not licensed to practice law. Similarly, in the current matter, respondent has violated rules 1-300(B) and 4-200(A) of the Rules of Professional Conduct by agreeing to perform legal services for, accepting fees from and performing legal services for clients who were residents of Massachusetts, a jurisdiction in which respondent was and is not licensed to practice law. In addition, the misconduct in the current matter

¹ Respondent's misconduct also involves the unauthorized practice of law in a foreign jurisdiction in violation of rule 1-300(B) of the Rules of Professional Conduct. No specific standard expressly applies to a violation of rule 1-300(B). However, Standard 2.19, the "catch-all" standard, provides that "[s]uspension not to exceed three years or reproof is the presumed sanction for a violation of a provision of the Rules of Professional Conduct not specified in these Standards." Even if Standard 2.19 were applied, the resulting discipline would be the same.

occurred between August 2013 and April 2014, while the misconduct in the prior matter occurred between June 2013 and May 2014. Since respondent's misconduct in the current matter occurred before the imposition of discipline in the prior matter, respondent's misconduct in the current matter is not indicative of his inability to conform his conduct to ethical norms because it occurred prior to the time he was placed on notice that his conduct violated ethical rules.

Had this single client matter been brought together with the prior client matters in case number 14-O-00303, *et al.*, it would not have changed the level of discipline. Furthermore, pursuant to *Sklar*, the aggravating weight of the prior is not as significant because there is no evidence that respondent's misconduct in the current matter, even though it is similar to the misconduct in the prior matter, reflected a failure on the part of respondent to learn from his prior misconduct. Therefore, it is unnecessary to impose additional actual suspension in this matter.

Guided by standard 2.3(b), the aggravating and mitigating circumstances herein, and in consideration of the foregoing *Sklar* and Standard 1.8(a) analyses, discipline consisting of one year suspension, stayed, and one year probation on the terms and conditions set forth herein is appropriate and is consistent with the Standards and will protect the public, the courts and the legal profession, maintain high professional standards, and preserve public confidence in the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of April 20, 2016, the prosecution costs in this matter are \$3066. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: Lee Alan Gross	Case number(s): 15-O-14084
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SIGNATURE OF THE PARTIES

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

4-25-2016

Date



Respondent's Signature

Lee Alan Gross

Print Name

Date

Respondent's Counsel Signature

Print Name

April 27, 2016

Date

Deputy Trial Counsel's Signature

Sherell N. McFarlane

Print Name

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In the Matter of: Lee Alan Gross	Case Number(s): 15-O-14084
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STAYED 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.

1. On page 3 of the Stipulation, paragraph B.(13), "pages 9-10" is deleted, and in its place is inserted "page 10".
2. On page 6 of the Stipulation, paragraph a., line 2, the following is inserted after "below," "and provide satisfactory proof of such restitution to the Office of Probation."

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.)**

May 4, 2016
Date

Rebecca Meyer Rosenberg
REBECCA MEYER ROSENBERG, 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 May 5, 2016, 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:

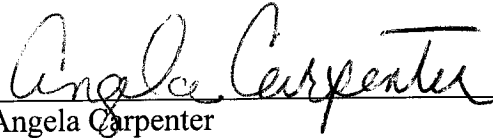
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

LEE A. GROSS
PO BOX 6361
IRVINE, CA 92616

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

Sherell N. McFarlane, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 5, 2016.



Angela Carpenter
Case Administrator
State Bar Court