

ORIGINAL

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State Bar Court of California Hearing Department Los Angeles DISBARMENT		
PUBLIC MATTER		
Counsel For The State Bar Eli D. Morgenstern Office of Chief Trial Counsel State Bar of California 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1334 Bar # 190560	Case Number(s): 16-O-13378 16-O-13695 16-O-14364 16-O-14654 16-O-14662 16-O-14699 16-O-14962 16-O-15186	For Court use only FILED APR 17 2017 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent Erikson McDonnell Davis 11574 Iowa Ave, Suite 104 Los Angeles, CA 90025-4130 Bar # 197841	Submitted to: Assigned 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: ERIKSON McDONNELL DAVIS Bar # 197841 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 **December 1, 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 **(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."

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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):
- ☒ 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 . See page 10.**
- (a) ☒ State Bar Court case # of prior case **15-O-14599, 15-O-14705, 15-O-14821, 15-O-15481, 16-O-10023, 16-O-10309, 16-O-10744, 16-O-10793, 16-O-10847, 16-O-11140, 16-O-12721.**
- (b) ☒ Date prior discipline effective **January 6, 2017**
- (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **RPC 3-110(A), Bus and Prof. Code sections 6106, 6106.3.**
- (d) ☒ Degree of prior discipline **Three years stayed suspension, three years probation, with conditions including two years actual suspension and until restitution and until compliance with standard 1.2(c)(1).**
- (e) ☐ If respondent has two or more incidents of prior discipline, use space provided below:
- (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. **See page 10.**

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- (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.
- (8) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See page 10.**
- (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 pages 9-10.
- (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) ☐ **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.

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- (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.
- (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 page 10.

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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 **Kamel Zayat** in the amount of \$ **5,995.00** plus 10 percent interest per year from **1/07/16**. If the Client Security Fund has reimbursed **Mr. Zayat** 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 **N/A** days from the effective date of the Supreme Court order in this case. See page 10 for further discussion re: Restitution.
- (3) ☐ **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Erikson McDonnell Davis

CASE NUMBERS: 16-O-13378, 16-O-13695,
16-O-14364, 16-O-14654,
16-O-14662, 16-O-14699,
16-O-14962, 16-O-15186

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 Rule of Professional Conduct.

Case No. 16-O-13378 (Complainant:Kamel Zayat)
Case No. 16-O-13695 (Complainant:Barbara LaDoucer)
Case No. 16-O-14364 (Complainant:Clifford Davis)
Case No. 16-O-14654 (Complainant:Robert Gevorkian)
Case No. 16-O-14662 (Complainant:Jonathan Matias)
Case No. 16-O-14699 (Complainant:David Stephenson)
Case No. 16-O-14962 (Complainant:Yvette Ramirez)
Case No. 16-O-15186 (Complainant:Domingo Juarez)

GENERAL BACKGROUND FACTS:

1. Between September 26, 2013, and January 5, 2017, respondent owned a law firm called Real Estate Law Center, P.C ("RELC").
2. At all times relevant to the facts herein, RELC: (i) obtained clients through advertising using mail, television, and the internet; (ii) utilized non-attorney staff to meet with prospective clients; (iii) attempted to assist its clients in obtaining loan modifications by challenging the practices of their lenders and/or service providers; and (iv) used mass joinder lawsuits and individual lawsuits in an attempt to achieve its loan modification goals.
3. All of the complainants herein originally approached RELC to assist them with obtaining modifications of their respective home loans. Ultimately, all of the complainants signed fee agreements with RELC, which provided that they hired the firm to pursue litigation against their respective lenders. The fee agreements required the complainants to pay RELC an advanced fee ("AF"). The fee agreements also required the complainants to pay RELC a monthly "maintenance fee" ("MF"). But, the firm only collected the MF from Clifford Davis, the complainant in Case No. 16-O-14364; David Stephenson, the complainant in Case No. 16-O-14699; and Domingo Juarez, the complainant in Case No. 16-O-15186.

FACTS:

4. Respondent failed to adequately supervise RELC's non-attorney staff, which allowed them to represent to the complainants herein, prior to an attorney's review and evaluation of each of their respective matters, that RELC would represent them in litigation against their respective lenders for the initial advanced fee specified below, plus a monthly maintenance fee.

<u>Case No.</u>	<u>Complainant</u>	<u>Quoted Advanced Fee</u>	<u>Date of Hire</u>
16-O-13378	Kamel Zayat	\$ 5,995.00	01/04/16
16-O-13695	Barbara LaDoucer	\$ 4,500.00	02/11/16
16-O-14364	Clifford Davis	\$ 5,000.00	06/18/14
16-O-14654	Robert Gevorkian	\$ 5,495.00	02/18/15
16-O-14662	Jonathan Matias	\$ 4,500.00	02/29/16
16-O-14699	David Stephenson	\$ 5,500.00	03/20/15
16-O-14962	Yvette Ramirez	\$ 5,000.00	06/29/15
16-O-15186	Domingo Juarez	\$ 5,995.00	01/29/16

5. At the time that the complainants herein employed RELC, they were all experiencing financial difficulties.

6. RELC collected total, pre-performance fees for its legal services from the complainants identified below in the amounts specified below.

<u>Case No.</u>	<u>Complainant</u>	<u>Total Fees Collected (AF + MF)</u>	<u>Final Payment</u>
16-O-13378	Kamel Zayat	\$ 5,995.00	01/07/16
16-O-13695	Barbara LaDoucer	\$ 3,000.00	04/15/16
16-O-14364	Clifford Davis	\$ 5,359.70	04/04/15
16-O-14654	Robert Gevorkian	\$ 5,433.00	10/05/15
16-O-14662	Jonathan Matias	\$ 2,000.00	02/29/16
16-O-14699	David Stephenson	\$ 6,219.40	07/30/15
16-O-14962	Yvette Ramirez	\$ 3,750.00	09/30/15
16-O-15186	Domingo Juarez	\$ 7,100.00	04/08/16

7. With respect to Messrs. Zayat, Matias, and Juarez, and Mss. LaDoucer and Ramirez, RELC performed loan modification services for them, *i.e.*, RELC prepared and sent loan modification applications on their behalf to their respective home loan lenders; however, these complainants terminated RELC before respondent or any other attorney employed by RELC filed a lawsuit against their respective home loan lenders.

8. With respect to Messrs. Davis and Gevorkian, RELC also performed loan modification services for them. In addition, respondent included Messrs. Davis and Gevorkian in mass joinder lawsuits, which respondent filed for the ultimate purpose of attempting to obtain a modification of their respective home loans.

9. Before Messrs. Zayat, Davis, Gevorkian, Matias, and Juarez, and Mss. LaDoucer and Ramirez signed fee agreements memorializing the terms of their employment of RELC, respondent failed to provide them with the following, separate written statement, in not less than 14-point bold type, as required by Civil Code, section 2944.6(a):

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting www.hud.gov.

10. RELC received attorney's fees from Messrs. Zayat, Davis, Gevorkian, Matias, and Juarez, and Mss. LaDoucer and Ramirez prior to performing each and every service that RELC contracted to perform, or represented to them that RELC would perform, on their behalf with respect to their respective home loans.

11. At all times relevant to the facts herein, Mr. Stephenson, the complainant in Case No. 16-O-14699, was, and is, a resident of Wisconsin.

12. Wisconsin prohibits a lawyer who is not licensed to practice law in Wisconsin from: (i) holding himself out as entitled to practice law in Wisconsin; and (ii) practicing law in Wisconsin.

13. Respondent never informed Mr. Stephenson that he was not entitled to practice law in Wisconsin. Nevertheless, RELC accepted \$5,500 in advanced attorney's fees from Mr. Stephenson, a Wisconsin resident, and performed loan modification services as a law firm on Mr. Stephenson's behalf with respect to his home loan which was secured by Mr. Stephenson's residential property in Wisconsin. By offering to provide legal services to Mr. Stephenson with respect to his home loan and accepting attorney's fees from him, and by providing loan modification services to Mr. Stephenson, respondent improperly held himself out as entitled to practice law, and practiced law, in Wisconsin. Respondent was not entitled to collect any of the \$5,500 in advanced attorney's fees that Mr. Stephenson paid to RELC.

14. Respondent received a total of \$38,857.10 in illegal fees from the eight complainants herein.

15. None of the complainants received loan modifications as a result of RELC's litigation and loan modification services.

16. To date, respondent has not provided any of the complainants with a refund of any portion of the illegal, advanced attorney's fees that they paid to RELC.

CONCLUSIONS OF LAW:

17. By failing to adequately supervise his non-attorney staff, which inadequate supervision allowed the non-attorney staff, prior to an attorney's review and evaluation of each of the

complainants' matters, to represent to the complainants that RELC would be able to represent them in litigation against their respective lenders for a specified advanced fee, respondent repeatedly failed to perform competently in willful violation of Rules of Professional Conduct, rule 3-110(A).

18. By failing to provide Messrs. Zayat, Davis, Gevorkian, Matias, and Juarez, and Mss. LaDoucer and Ramirez with a separate written statement in conformity with Civil Code, section 2944.6(a), respondent willfully violated Business and Professions Code, section 6106.3.

19. By collecting fees from Messrs. Zayat, Davis, Gevorkian, Matias, and Juarez, and Mss. LaDoucer and Ramirez for RELC's loan modification services before RELC had fully performed each and every service RELC had contracted to perform, or represented to the clients that RELC would perform, respondent violated Civil Code, section 2944.7(a)(1), in willful violation of Business and Professions Code, section 6106.3.

20. By improperly holding himself out as entitled to practice law, and practicing law, in Wisconsin, respondent engaged in the unauthorized practice law in willful violation of Rules of Professional Conduct, rule 1-300(B).

21. Respondent breached his fiduciary duty to the complainants by: (i) failing to supervise his non-attorney staff, which allowed the non-attorney staff to represent to the complainants, prior to an attorney's review and evaluation of each of their respective matters, that RELC would represent them in litigation against their respective lenders; (ii) having the complainants enter into fee agreements for lender litigation, when the complainants originally approached RELC to assist them with modifying their respective home loans; and (iii) charging and collecting pre-performance fees for RELC's legal services, when respondent knew that each service that RELC performed, whether it was preparing and sending a loan modification application to a home loan lender or filing a lawsuit, was undertaken for the ultimate purpose of attempting to obtain a loan modification for the complainants, and respondent thereby committed acts of moral turpitude in willful violation of Business and Professions Code, section 6106.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Effective January 6, 2017, pursuant to Supreme Court Order S237442, respondent was suspended from the practice of law for three years, execution of the suspension was stayed, and respondent was placed on probation for three years with conditions including a two-year actual suspension and until he made restitution to the eleven complainants in the principal amount of \$134,903.79, and until he complied with standard 1.2(c)(1). The gravamen of respondent's misconduct was that between October 2013 and September 2015, respondent collected advanced attorney's fees for his legal services, which included the filing of lawsuits against the complainants respective home loan lenders, the ultimate purpose of which was to obtain a loan modification, and therefore respondent violated Civil Code, section 29944.7(a)(1).

Multiple Acts of Wrongdoing (Std. 1.5(b)): When the totality of respondent's misconduct is considered (see *Sklar* discussion below), respondent collected illegal, advanced attorney's fees from nineteen former clients in the total amount of \$173,760.89 during a nearly three-year period. Respondent's multiple acts of misconduct warrant serious weight in aggravation given their breadth and scope.

Dishonesty/Overreaching (Std. 1.5(g)): The fee agreements that the complainants signed stated that the advanced attorney's fees paid by the complainants were a "true retainer" earned upon receipt and were non-refundable in order to ensure that RELC would work on the complainants' respective matters "exclusively." The false and misleading language in the fee agreements was dishonest and overreaching. (See *In re Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944):

Significant Harm to Clients (Std. 1.5(j)): Respondent exploited the complainants' financial difficulties and his fiduciary position by charging and collecting pre-performance fees in violation of Civil Code, section 2944.7(a), and by not providing refunds. (*In the Matter of Taylor* (Review Department 2012) 5 Cal. State Bar Ct. Rptr. 221, 235 [significant harm where attorney repeatedly charged up-front fees for loan modification services from financially desperate clients and failed to provide refunds]; *Beery v. State Bar* (1987) 43 Cal.3d 82, 813 [parties in fiduciary or confidential relationship do not deal on equal terms because trusted person is in superior position to exert unique influence over dependent party].)

Failure to Make Restitution (Std. 1.5(m)): To date, respondent has not made restitution in any amount to any of the complainants herein.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: By entering into this stipulation, which serves to resolve this matter fully prior to the filing of a notice of disciplinary charges, respondent has demonstrated that he acknowledges his misconduct and saved the 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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

FURTHER RESTITUTION.

In addition to the restitution amounts set forth on page 5 of this stipulation, respondent must pay the following additional restitution on the same terms as set forth on page 5 and provide satisfactory proof of payment to the Office of Probation. 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) identified below, respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

<u>Payee</u>	<u>Principal Amount</u>	<u>Interest Accrues From</u>
Barbara LaDoucer	\$ 3,000.00	04/15/16
Clifford Davis	\$ 5,359.70	04/04/15
Robert Gevorkian	\$ 5,433.00	10/05/15
Jonathan Matias	\$ 2,000.00	02/29/16
David Stephenson	\$ 6,219.40	07/30/15
Yvette Ramirez	\$ 3,750.00	09/30/15
Domingo Juarez	\$ 7,100.00	04/08/16

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
16-O-13378	One	Rules of Professional Conduct, rule 3-110(A)
16-O-13378	Two	Rules of Professional Conduct, rule 1-300(A)
16-O-13378	Five	Rules of Professional Conduct, rule 4-100(B)(3)
16-O-13378	Six	Rules of Professional Conduct, rule 3-700(D)(2)
16-O-14364	Nine	Rules of Professional Conduct, rule 3-110(A)
16-O-14364	Ten	Rules of Professional Conduct, rule 1-300(A)
16-O-14654	Fifteen	Business and Professions Code, section 6068(m)
16-O-14654	Sixteen	Rules of Professional Conduct, rule 3-700(D)(1)
16-O-14699	Twenty-One	Rules of Professional Conduct, rule 3-110(A)
16-O-14699	Twenty-Two	Rules of Professional Conduct, rule 1-300(A)

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 rule and statutory violations. 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."

Initially, the misconduct in the instant matters occurred between June 2014 and April 2016, before respondent was disciplined for the misconduct that he committed in the prior disciplinary proceeding. Further, the misconduct in the instant matters was, at least partially, contemporaneous with, and was similar, if not the same as, the misconduct committed by respondent in the prior discipline.

Accordingly, *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602 provides guidance as to how to analyze respondent's prior discipline. Under *Sklar*, the State Bar Court must "consider the totality of the findings in the two cases to determine what the discipline would have been had all the charged misconduct in this period been brought as one case." (*Id.* at p. 619.)

The most severe sanction applicable to respondent's misconduct is found in: (1) Standard 2.18, which applies to respondent's violations of Business and Professions Code, section 6106.3; and (2) Standard 2.11, which applies to respondent's breach of fiduciary duty to the complainants, an act of moral turpitude.

Standard 2.18 instructs that disbarment or actual suspension is appropriate discipline for a violation of Business and Professions Code, section 6106.3. Standard 2.11 instructs that actual suspension to disbarment is appropriate for acts of moral turpitude with the degree of sanction depending on the magnitude of the misconduct, the harm caused, and the extent to which it relates to the member's practice of law.

Respondent's misconduct related directly to his law practice, spanned nearly three years, involved overreaching and dishonesty, and nineteen former clients, the complainants herein, as well as the complainants in the prior proceeding. Respondent collected \$173,760.89 in illegal, advanced attorney's fees from these nineteen complainants, all of whom were experiencing financial difficulties. Respondent has failed to refund all but \$2,000 of the illegal attorney's fees he received from these nineteen complainants. In breaching the fiduciary duty that he owed to the complainants, respondent harmed his former clients.

Given the breadth and scope of respondent's misconduct, disbarment is required to protect the public and the legal profession.

In the Matter of Huang (2014) 5 Cal. State Bar Ct. Rptr. 296, was cited in respondent's previous disciplinary proceeding in support of the discipline recommendation, which consisted of a two-year actual suspension and until respondent made restitution and until respondent complied with standard 1.2(c)(1).

When respondent's misconduct in this proceeding is considered together with the misconduct he committed in the prior proceeding, respondent's misconduct is clearly more serious than that committed by the attorney in *Huang* for a variety of reasons, including the number of clients, and the amount of illegal, advanced attorney's fees involved. Therefore, respondent's misconduct warrants more severe discipline than that imposed against the attorney in *Huang*.

COSTS OF DISCIPLINARY PROCEEDINGS.


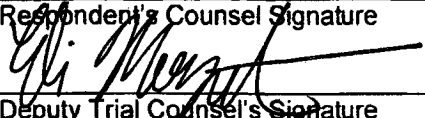
Respondent acknowledges that the Office of Chief Trial Counsel has informed him that as of March 16, 2017, the prosecution costs in this matter are approximately \$11,464. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: ERIKSON McDONNELL DAVIS	Case number(s): 16-O-13378; 16-O-13695; 16-O-14364; 16-O-14654; 16-O-14662; 16-O-14699, 16-O-14962; 16-O-15186
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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.

3-20-17		ERIKSON M. DAVIS
Date	Respondent's Signature	Print Name
4-5-17		ELI D. MORGENSTERN
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: ERIKSON McDONNELL DAVIS	Case Number(s): 16-O-13378, 16-O-13695, 16-O-14364 16-O-14654, 16-O-14662, 16-O-14699, 16-O-15186
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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.

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 Erikson McDonnell Davis 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.

April 17, 2017
Date

Cynthia Valenzuela
CYNTHIA VALENZUELA
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 17, 2017, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSION OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

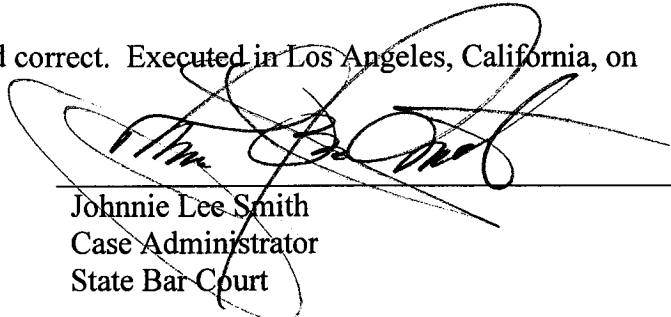
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ERIKSON MCDONNELL DAVIS
11574 IOWA AVENUE, SUITE 104
LOS ANGELES, CA 90025

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

ELI MORGENSTERN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 17, 2017.



Johnnie Lee Smith
Case Administrator
State Bar Court