

ORIGINAL

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State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Eli D. Morgenstern Office of Chief Trial Counsel State Bar of California 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1334</p> <p>Bar # 190560</p>	<p>Case Number(s): 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</p>	<p>For Court use only</p> <p align="center">FILED JUL 21 2016 STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Arthur Margolis, Esq. Margolis & Margolis LLP 2000 Riverside Dr. Los Angeles, CA 90039 (323) 953-8996</p> <p>Bar # 57703</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: ERIKSON McDONNELL DAVIS</p> <p>Bar # 197841</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 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 entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **15** 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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Actual Suspension

(Effective July 1, 2015)

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☐ Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: **three billing cycles following the effective date of the Supreme Court Order herein.** (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
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **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 pages 11 and 12 for discussion re: harm.**
- (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. See attachment page 11 for discussion re: multiple acts.
- (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.
- (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 convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Discipline. See attachment, page 12.

Pre-Filing Stipulation. See attachment, page 12.

D. Discipline:

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of **three (3) years**.
- 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:
- (b) ☒ The above-referenced suspension is stayed.
- (2) ☒ **Probation:**
- Respondent must be placed on probation for a period of **three (3) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) ☒ **Actual Suspension:**
- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **two (2) years**.
- 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, and its addendum on page 12.
- iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and present learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

☐ No Ethics School recommended. Reason: .

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- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☒ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- ☐ No MPRE recommended. Reason: .
- (2) ☒ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) ☐ **Other Conditions:**

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In the Matter of: ERIKSON McDONNELL DAVIS	Case Number(s): 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
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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
Grace Hermenegildo	\$ 5,368.00	12/19/14
Shelia Roberts	\$25,157.34	06/05/15
David Schmidt	\$ 4,206.00	08/10/15
See Attachment page 12, for Further Discussion re Restitution		

- ☐ 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: Erikson McDonnell Davis

CASE NUMBERS: 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

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. 15-O-14599 (Complainant: Grace Hermenegildo)
Case No. 15-O-14705 (Complainant: Shelia Roberts)
Case No. 15-O-14821 (Complainant: David Schmidt)
Case No. 15-O-15481 (Complainant: Earl Kennedy)
Case No. 16-O-10023 (Complainant: Gayle Ulshafer)
Case No. 16-O-10309 (Complainant: Patrick Thompson)
Case No. 16-O-10744 (Complainant: Hope Hoffman)
Case No. 16-O-10793 (Complainant: Bo McCarthy)
Case No. 16-O-10847 (Complainant: Alejandro Tobias)
Case No. 16-O-11140 (Complainant: Deborah Chieppa)
Case No. 16-O-12721 (Complainant: John & LaTonya Hicks)

GENERAL BACKGROUND FACTS:

1. On September 26, 2013, respondent assumed ownership of Real Estate Law Center, P.C ("RELC") from another attorney, and became RELC's Director, Chief Executive Officer, Secretary, and Chief Financial Officer.
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 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 agreement also required the complainants to pay RELC a monthly "maintenance fee" ("MF"); however, the firm did not collect a maintenance fee from every client.

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>
15-O-14599	Grace Hermenegildo	\$ 5,500.00	10/25/13
15-O-14705	Shelia Roberts	\$ 5,000.00	08/23/13
15-O-14821	David Schmidt	\$ 5,000.00	05/20/15
15-O-15481	Earl Kennedy	\$ 6,000.00	01/04/13
16-O-10023	Gayle Ulshafer	\$ 5,000.00	12/04/14
16-O-10309	Patrick Thompson	\$ 6,000.00	02/06/14
16-O-10744	Hope Hoffman	\$ 5,000.00	11/19/14
16-O-10793	Bo McCarthy	\$ 5,000.00	07/23/15
16-O-10847	Alejandro Tobias	\$ 3,500.00	05/15/14
16-O-11140	Deborah Chieppa	\$ 5,000.00	07/17/13
16-O-12721	John & LaTonya Hicks	\$ 6,000.00	01/24/14

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 herein in the amounts specified below.

<u>Case No.</u>	<u>Complainant</u>	<u>Total Fees Collected (AF + MF)</u>	<u>Final Payment</u>
15-O-14599	Grace Hermenegildo	\$ 5,368.00	12/19/14
15-O-14705	Shelia Roberts	\$ 25,157.34	06/05/15
15-O-14821	David Schmidt	\$ 6,206.00	08/10/15
15-O-15481	Earl Kennedy	\$ 21,000.00	05/21/14
16-O-10023	Gayle Ulshafer	\$ 12,504.00	09/30/15
16-O-10309	Patrick Thompson	\$ 23,000.00	05/01/15
16-O-10744	Hope Hoffman	\$ 5,419.65	06/21/15
16-O-10793	Bo McCarthy	\$ 5,000.00	09/17/15
16-O-10847	Alejandro Tobias	\$ 20,248.80	06/25/14
16-O-11140	Deborah Chieppa	\$ 5,000.00	07/17/13
16-O-12721	John & LaTonya Hicks	\$ 6,000.00	12/16/14

7. With the exception of Bo McCarthy (Case No. 16-O-10793), respondent filed lawsuits on behalf of each of the complainants for the ultimate purpose of attempting to obtain a modification of the complainants' respective home loans.

8. With respect to Mr. McCarthy, RELC performed loan modification services on his behalf; however, RELC's attorney-client relationship with him terminated before RELC filed a lawsuit against his lender.

9. RELC received fees from all of the complainants herein 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. In total, RELC received \$134,903.79 in pre-performance loan modification fees.

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

11. To date, with the exception of David Schmidt, the complainant in Case No. 15-O-14821, to whom RELC provided a partial refund of \$2,000, respondent has not provided any of the complainants with a refund of any portion of the illegal, pre-performance fees that RELC collected from them.

CONCLUSIONS OF LAW:

12. 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 failed to perform competently in wilful violation of Rules of Professional Conduct, rule 3-110(A).

13. By collecting fees from Mr. McCarthy for RELC's loan modification services before RELC had fully performed each and every service RELC had contracted to perform, or represented to the client that RELC would perform, respondent violated Civil Code, section 2944.7(a), in willful violation of Business and Professions Code, section 6106.3.

14. By collecting pre-performance fees for RELC's litigation services, when the ultimate purpose of those litigation services was to attempt to obtain a modification of the complainants' respective home loans, respondent violated Civil Code, section 2944.7(a), in willful violation of Business and Professions Code, section 6106.3.

15. Respondent breached his fiduciary duty 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; (iii) bringing lawsuits on behalf of the complainants with the ultimate purpose of obtaining loan modifications; and (iv) charging and collecting pre-performance fees for those lawsuits, and thereby committed acts of moral turpitude in willful violation of Business and Professions Code, section 6106.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent's multiple acts of misconduct over an approximately two-year period are a significant aggravating factor.

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].)

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent has been a member of the State Bar since December 1, 1998. At the time that the misconduct herein was committed, respondent had practiced law for approximately 15 years without a prior record of discipline. Even though respondent's misconduct is serious, he is entitled to mitigation for his 15 years' of discipline-free practice. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 31, 32, 36, 39 [mitigative credit given for almost 12 years of discipline-free practice despite intentional misappropriation and commingling].)

Prefiling 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].)

RESTITUTION.

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

<u>Payee</u>	<u>Principal Amount</u>	<u>Interest Accrues From</u>
Earl Kennedy	\$ 21,000.00	05/21/14
Gayle Ulshafer	\$ 12,504.00	09/30/15
Patrick Thompson	\$ 23,000.00	05/01/15
Hope Hoffman	\$ 5,419.65	06/21/15
Bo McCarthy	\$ 5,000.00	09/17/15
Alejandro Tobias	\$ 20,248.80	06/25/14
Deborah Chieppa	\$ 5,000.00	07/17/13
John & LaTonya Hicks	\$ 6,000.00	12/16/14

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.”

The most severe sanction applicable to respondent’s misconduct is found in Standard 2.11, which applies to respondent’s acts of moral turpitude. Standard 2.11 provides that disbarment or actual suspension is the presumed sanction for an act of moral turpitude. The degree of the sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim; the impact on the administration of justice; and the extent to which misconduct related to the member’s practice of law.

Respondent’s acts of moral turpitude related directly to his law practice, and extended for approximately two years, a significant period of time. Respondent exploited the complainants’ financial difficulties and his fiduciary position by collecting illegal, pre-performance fees and failing to refund them. Respondent further neglected his fiduciary duties to the complainants by failing to supervise adequately his non-attorney staff. The significant financial harm that respondent’s misconduct caused to each of the complaints, as well as its scope and duration, warrants the serious discipline recommended by this stipulation.

Nevertheless, respondent’s agreement to enter into this stipulation prior to the filing of a Notice of Disciplinary Charges is a significant mitigating factor. By so doing, respondent has demonstrated that he recognizes the wrongfulness of his misconduct. The agreement to enter into this stipulation is a significant step in respondent’s demonstration of his willingness and ability to conform to ethical responsibilities in the future.

In consideration of the scope of respondent’s serious misconduct, the significant harm caused by it, the aggravating and mitigating circumstances surrounding it, and the applicable Standards, the State Bar submits that the discipline recommended herein will serve the purposes of attorney discipline.

The case law also supports the recommended discipline. In *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296, the attorney was culpable of charging pre-performance loan modification

fees in eight matters, and failing to perform competently by not supervising his non-attorney staff, aiding in the unauthorized practice of law, and failing to return client files. The misconduct occurred over a two-year period. (*Id.* at pp. 299-304.) In aggravation, the attorney committed multiple acts of misconduct, and caused harm to his clients. In mitigation, he had no prior record of discipline, proved good character, displayed remorse, and was cooperative. (*Id.* at p. 304.) The Review Department recommended a discipline consisting of a two year actual suspension and until the attorney paid restitution and complied with standard 1.2(c)(1).

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed him that as of June 14, 2016, the prosecution costs in this matter are approximately \$13,149. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of:
ERIKSON McDONNELL DAVIS

Case number(s):
**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**

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.

6-22-16

Date

Respondent's Signature

Erikson McDonnell Davis

Print Name

6/25/16

Date

Respondent's Counsel Signature

Arthur L. Margolis

Print Name

6/30/16

Date

Deputy Trial Counsel's Signature

Eli D. Morgenstern

Print Name

(Do not write above this line.)

In the Matter of: ERIKSON McDONNELL DAVIS	Case Number(s): 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
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ACTUAL SUSPENSION ORDER


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

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

1. On page 7 of the Stipulation, paragraph a. (the box marked with an "X"), line 2, "and furnish proof of such to the State Bar's Office of Probation in Los Angeles" is inserted after "below."
2. On page 11 of the Stipulation, paragraph 12, line 4 "recklessly" is inserted between "respondent" and "failed".
3. On page 11 of the Stipulation, the following footnote is added after paragraph 15: The court notes that the same facts underlying the rule 3-110(A) and section 6106.3 violations also underlie the section 6106 violation. As such, the rule 3-110(A) and section 6106.3 violations are duplicative of the section 6106 violation. (See, e.g., *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 10-11.)
4. On page 12 of the Stipulation, the section regarding restitution, line 2, "and furnish proof of such to the State Bar's Office of Probation in Los Angeles" is inserted after "below."

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.)**

July 21, 2016
Date


REBECCA MEYER ROSENBERG
Judge Pro Tem 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 July 21, 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:

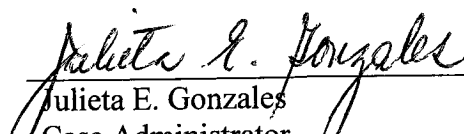
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ARTHUR LEWIS MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

Eli D. Morgenstern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 21, 2016.



Julieta E. Gonzales
Case Administrator
State Bar Court