

(Do not write above this line.)

**State Bar Court of California  
Hearing Department  
Los Angeles  
ACTUAL SUSPENSION**

**PUBLIC MATTER**

<p>Counsel For The State Bar</p> <p>Monique T. Miller, DTC State Bar of California Office of the Chief Trial Counsel 1149 South hill Street Los Angeles, CA 90015-2299 Telephone: (213) 765-1486</p> <p>Bar # 212469</p>	<p>Case Number(s):</p> <p>07-O-11228; 07-O-13029; 07-O-13798; 07-O-14124; 09-O-13834; 09-O-17409; 09-O-17785; 09-O-18921; 09-O-19174; 10-O-00081; 10-O-00088; 10-O-00336; 10-O-00927; 10-O-02451; 10-O-04053; 10-O-04078; 10-O-04083; 10-O-04092; 10-O-04405; 10-O-04832; 10-O-04838; 10-O-04840; 10-O-05609; 10-O-05611; 10-O-08697</p>	<p>For Court use only</p> <p align="center"><b>FILED</b> APR 12 2011 <i>[Signature]</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Theodore A Cohen Law Offices of Theodore A Cohen 4601 Admiralty Way Marina Del Rey CA 90292 Telephone: (310) 271-7164</p> <p>Bar # 28637</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: GARY D. OLIVE</p> <p>Bar # 176748</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 June 12, 1995.
- (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.



(Do not write above this line.)

- (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 36 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):
  - 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: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline** [see standard 1.2(f)]
  - (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

In February 2009, Respondent voluntarily enrolled himself in the Lawyer's Assistance Program, and he continues to participate in that program.

In addition, in recognition of his problems, Respondent made changes in his law practice and as of November 2010, ceased accepting employment that involved loan modification matters.

**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 present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:
- (b)  The above-referenced suspension is stayed.

- (2)  **Probation:**
- Respondent must be placed on probation for a period of four (4) 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 present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
  - No Ethics School recommended. Reason: .
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10)  The following conditions are attached hereto and incorporated:
  - Substance Abuse Conditions                       Law Office Management Conditions
  - Medical Conditions                                       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:**

(Do not write above this line.)

In the Matter of: GARY D. OLIVE	Case Number(s): 07-O-11228; 07-O-13029; 07-O-13798; 07-O-14124; 09-O-13834; 09-O-17409; 09-O-17785; 09-O-18921; 09-O-19174; 10-O-00081; 10-O-00088; 10-O-00336; 10-O-00927; 10-O-02451; 10-O-04053; 10-O-04078; 10-O-04083; 10-O-04092; 10-O-04405; 10-O-04832; 10-O-04838; 10-O-04840; 10-O-05609; 10-O-05611; 10-O-08697
------------------------------------	---

## 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
SEE ATTACHED	SEE ATTACHED	SEE ATTACHED

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than two (2) years after the effective date of the discipline herein.

### 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.



<b>In the Matter of:</b> <b>GARY D. OLIVE</b>	<b>Case Number(s):</b> 07-O-11228; 07-O-13029; 07-O-13798; 07-O-14124; 09-O-13834; 09-O-17409; 09-O-17785; 09-O-18921; 09-O-19174; 10-O-00081; 10-O-00088; 10-O-00336; 10-O-00927; 10-O-02451; 10-O-04053; 10-O-04078; 10-O-04083; 10-O-04092; 10-O-04405; 10-O-04832; 10-O-04838; 10-O-04840; 10-O-05609; 10-O-05611; 10-O-08697
--	--

**ATTACHMENT TO FINANCIAL CONDITIONS**

**Restitution**

<b>Payee</b>	<b>Principal Amount</b>	<b>Interest Accrues From</b>
Mario Bruno	\$2,500	12/01/07
Alicia Sanchez	\$500	04/14/09
Reymundo Acosta	\$2,495	09/28/09
Martha Sanchez	\$500	04/14/09
Javier Romero	\$2,495	07/31/09
Juan Plata	\$2,495	09/01/09
Nestor Gutierrez	\$2,495	12/01/09
Claudia Navarro	\$2,495	11/01/09
Raquel Tovar	\$2,495	11/01/09
Maria Cubias	\$2,495	05/01/09
Maria Zepeda	\$4,495	11/01/09
Blanca Ramirez	\$2,495	11/01/09
Juan Villalobos	\$2,495	01/01/10
Leticia Vasquez	\$2,995	08/18/09
Juan Torres	\$2,497.50	04/19/10
Maria Najera	\$1,495	04/01/09

(Do not write above this line.)

In the Matter of: <b>GARY D. OLIVE</b>	Case Number(s): 07-O-11228; 07-O-13029; 07-O-13798; 07-O-14124; 09-O-13834; 09-O-17409; 09-O-17785; 09-O-18921; 09-O-19174; 10-O-00081; 10-O-00088; 10-O-00336; 10-O-00927; 10-O-02451; 10-O-04053; 10-O-04078; 10-O-04083; 10-O-04092; 10-O-04405; 10-O-04832; 10-O-04838; 10-O-04840; 10-O-05609; 10-O-05611; 10-O-08697
---	---

### Substance Abuse Conditions

- a.  Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
  
- b.  Respondent must attend at least                      meetings per month of:
  - Alcoholics Anonymous
  - Narcotics Anonymous
  - The Other Bar
  - Other program LAP

As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10<sup>th</sup>) day of the following month, during the condition or probation period.

- c.  Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
  
- d.  Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.
  
- e.  Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                               GARY D. OLIVE, #176748

CASE NUMBER(S):                               07-O-11228; 07-O-13029; 07-O-13798; 07-O-14124;  
  09-O-13834; 09-O-17409; 09-O-17785; 09-O-18921;  
  09-O-19174; 10-O-00081; 10-O-00088; 10-O-00336;  
  10-O-00927; 10-O-02451; 10-O-04053; 10-O-04078;  
  10-O-04083; 10-O-04092; 10-O-04405; 10-O-04832;  
  10-O-04838; 10-O-04840; 10-O-05609; 10-O-05611;  
  10-O-08697

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.

**INCORPORATION OF PRIOR STIPULATION**

On February 9, 2010, the parties lodged with the State Bar Court in Alternative Discipline Program (“ADP”) proceedings a Stipulation re: Facts and Conclusions of Law in Case Nos. 07-O-11228; 07-O-13029; 07-O-13798; and 07-O-14124 (the “Prior Stipulation”). Respondent was released from ADP proceedings under rule 5.386 of Rules of Procedure of the State Bar. The facts and conclusions of law from that Prior Stipulation, which remains binding,<sup>1</sup> are incorporated and fully set forth herein.

**PRIOR STIPULATION**

Case No. 07-O-11228 (State Bar Investigation)

**FACTS:**

1. At all relevant times, Respondent maintained client trust account, xxx-xxx9056<sup>2</sup>, at Wells Fargo Bank (“CTA”).
2. Between December 5, 2006 and May 31, 2007, Respondent issued electronic (“EC”) and paper checks from his CTA to pay his personal and business expenses including, but not limited to the following:

<u>Check No./EC</u>	<u>Date</u>	<u>Payee</u>	<u>Amount</u>
1290	12/05/06	Paramount Self Storage	\$157
1004	12/12/06	Alameda Animal Hospital	\$100
EC	12/26/06	Southern California Edison	\$143.22
EC	01/24/07	Southern California Edison	\$305
EC	01/31/07	Time Warner Cable	\$229.62
EC	02/07/07	Sprint PCS	\$608.15
EC	02/21/07	Paramount Self Storage	\$157

<sup>1</sup> See Rule 5.386 of Rules of Procedure of the State Bar: Impact of Subsequent Proceedings on ADP Participation.

<sup>2</sup> The full account number is omitted for privacy purposes.

EC	05/02/07	Southern California Edison	\$241.50
EC	05/08/07	Sprint PCS	\$345.32
2001	05/30/07	Paramount Self Storage	\$157.00

CONCLUSIONS OF LAW:

3. By issuing paper and electronic checks from his CTA to pay his personal and business expenses, Respondent misused his client trust account, in willful violation of Rule 4-100(A), Rules of Professional Conduct.

Case No. 07-O-13029 (Complainant: Byron Jones)

FACTS:

4. On August 2, 2000, Debra Jones hired Respondent to prepare and file either a petition for a writ of habeas corpus ("petition for a writ") or an appeal for her son, Byron, following Byron's June 2000 conviction of seven counts of attempted murder in the matter entitled *People vs. Byron Jones*, Los Angeles County Superior Court case no. BA199275. On August 2, 2000, Debra paid Respondent \$1,400 to evaluate whether an appeal or a petition for a writ should be filed.

5. In August 2000, Respondent and the Joneses decided that a court-appointed attorney would prepare and file the appeal instead of Respondent. On August 3, 2000, a notice of appeal was filed by a court-appointed attorney and in April 2001, the appeal was denied and Byron's conviction was affirmed.

6. On April 8, 2002, Byron filed a *pro se* petition for a writ in the Superior Court. On or about April 23, 2002, the petition was summarily denied.

7. On March 3, 2004, Byron filed another petition for a writ, *pro se*. On March 10, 2004, the petition was again summarily denied.

8. In March 2004, Respondent agreed to prepare and file a petition for a writ in the Superior Court on behalf of Byron. Between March 2, 2004 and August 6, 2004, Debra paid Respondent approximately \$10,100 to prepare the petition for a writ.

9. On August 4, 2004, Respondent obtained the declaration of one witness in support of the petition for a writ.

10. On March 9, 2005, Respondent obtained the declaration of a second witness in support of the petition for a writ.

11. On August 15, 2005, Respondent filed a petition for a writ in the Superior Court.

12. Subsequent to August 2005, Respondent failed to keep the Joneses informed of the status of the petition.

CONCLUSIONS OF LAW:

13. By failing to keep the Joneses informed of the status of the petition, Respondent failed to keep clients reasonably informed of significant developments in a matter with regard to which the attorney has agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

Case No. 07-O-13798 (Complainant: Mario Bruno)

FACTS:

14. On April 20, 2006, Mario Ocampo Bruno ("Bruno") hired Respondent to renegotiate the balance Bruno owed on a loan for a car that was repossessed from him. From April 20, 2006 through on or September 9, 2006, Bruno made payments to Respondent totalling \$2,500, the agreed amount of Respondent's legal fee.

15. Between April 2006 and September 2006, Respondent's office contacted Fireside Bank and obtained its agreement to work out a payment plan with Bruno. However, Bruno, when contacted, refused to settle the matter through a payment plan and insisted that the bank stop collection efforts altogether.

16. On October 24, 2006, Fireside Bank ("Fireside"), the lender of Bruno's car loan, filed a lawsuit against Bruno to recover the balance of the loan. The lawsuit was entitled *Fireside Bank vs. Mario Ocampo*, Los Angeles County Superior Court case no. 06N01153. Bruno was personally served with the lawsuit, but did not inform Respondent of the service. Bruno did not respond to the lawsuit. On or March 2, 2007, Fireside obtained a default judgment against Bruno.

17. On May 29, 2007, Fireside obtained a court order to garnish Bruno's wages. Several months later, Bruno called Respondent and informed him about the default judgment and the wage garnishment. Respondent said he would look into it. Unfortunately, by that time, it was too late to do anything about either.

18. Subsequent to November 2007, Respondent failed to advise Bruno that he would not be providing any additional legal services on his behalf.

19. Respondent did not refund any portion of the \$2,500 in advanced fees paid to him by Bruno.

CONCLUSIONS OF LAW:

20. By failing to give Bruno notice of his cessation of services, Respondent improperly withdrew from employment, in willful violation of Rule 3-700(A)(2), Rules of Professional Conduct.

21. By failing to refund to Bruno any portion of the \$2,500 in advanced fees paid to him upon his cessation of services, Respondent acted in willful violation of rule 3-700(D)(2), Rules of Professional Conduct.

Case No. 07-O-14124 (Complainant: Raymond Hunt)

FACTS:

22. On October 4, 2004, the family of Raymond Hunt ("Hunt") hired Respondent to represent Hunt through trial in a criminal matter entitled *People vs. Hunt*, Los Angeles County Superior Court Case No. NA063168. Respondent tried the case and Hunt was convicted. Respondent's employment with Hunt concluded at that time.

23. In 2006, Hunt hired Attorney Linda Acaido ("Acaido") to appeal his conviction. Acaido filed the appeal and in or about early 2007, Hunt's appeal was denied.

24. In October 2007, Hunt filed a complaint with the State Bar, requesting his client file from Respondent.

25. On February 22, 2008, a State Bar investigator sent Respondent a letter, notifying Respondent that Hunt requested his client file.

26. On August 10, 2008, Respondent provided Hunt with his file.

#### CONCLUSIONS OF LAW:

27. By failing to provide Hunt's file to him until approximately five months after notification by the State Bar of Hunt's request, Respondent failed to promptly return client papers and property upon request, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

#### FEE ARBITRATION CONDITION IN CASE NO. 07-O-13029

Within 120 days from the effective date of the discipline herein, Respondent hereby agrees to:

- (i) Send Debra and Byron Jones a letter, notifying them that Respondent is required by court order to initiate, pay for, and participate in State Bar Mandatory Fee Arbitration. The purpose of the arbitration is to determine whether Respondent had earned all fees and/or costs paid by the client to Respondent.
- (ii) Mail a request for Arbitration of a Fee Dispute with the filing fee [5% of the disputed amount] to the State Bar Mandatory Fee Arbitration ("FA") Program. The FA Program will notify the Joneses of Respondent's initiation of a fee arbitration and the client will have thirty (30) days to communicate his/her agreement to arbitrate to the FA Program.
- (iii) Abide by any final arbitration award.
- (iv) Respondent shall provide proof of compliance with this condition to the State Bar's Office of Probation.

#### WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties hereby waive any variance between the Notice of Disciplinary Charges ("NDC") filed on February 24, 2011 in Case Nos. 09-O-17409; 09-O-17785; 09-O-18921; 09-O-19174; 10-O-00088; 10-O-00927; 10-O-04053; 10-O-04078; 10-O-04092; 10-O-04405; 10-O-04840; 10-O-05609; and 10-O-05611, and the facts and conclusions of law contained in this stipulation.

#### GENERAL BACKGROUND

28. At all times relevant herein, Respondent held himself out as an attorney who would provide legal services to clients through loan modification relief companies called either Home 911, LLC ("911"), or Ocwen Solutions, LLC ("Ocwen"), or Aqua Strategic Solutions, LLC.

29. At all times relevant herein, the owner of Aqua Strategic solutions, LLC. ("Aqua") was a non-attorney, Nancy Duarte ("Duarte").

30. From January 12, 2009 to October 31, 2009, Duarte maintained a business account at Wells Fargo Bank, in Whittier, California, Account No. xxxx- x5961<sup>3</sup> ("Aqua's account").

31. On January 27, 2009, Respondent became a new authorized signer to Aqua's account.

Case No. 09-O-13834 (Complainant: Alicia Sanchez)

FACTS:

32. On August 14, 2008, Alicia Sanchez ("Sanchez"), who was facing foreclosure on her residence, called Home 911, a loan modification relief company. Sanchez spoke to Johnny Mora ("Mora"). On the same day, Mora came to Sanchez's residence. Mora represented to Sanchez that Respondent would be able to forestall the foreclosure for \$2,495 in advanced legal fees. Relying on Mora's representation regarding Respondent's legal services, Sanchez signed a one-page "Attorney Client Fee Contract" providing that Respondent's law office would provide legal services to Sanchez regarding her residence, and a one-page "Loan Mitigation/ Modification & Presentation Fee Acknowledgment" (the "fee receipt") requiring payment of \$2,495. Pursuant to the fee receipt, Sanchez would receive a \$2,000 refund if her existing loan could not be modified within 30-120 days. On August 18, 2008, Sanchez paid an initial payment of \$1,000 for Respondent's legal services. On August 29, 2008, Sanchez paid a further sum of \$1,405 for Respondent's legal services.

33. On August 14, 2008, Sanchez provided Mora with bank statements and the necessary documents in order for Respondent to immediately process the loan modification and forestall the court proceedings related to the sale of her residence.

34. On November 9, 2008, Sanchez received an eviction notice and a complaint for unlawful detainer following foreclosure sale. Sanchez faxed the eviction notice and complaint to Respondent's law office. Thereafter, Respondent provided no legal services to Sanchez in connection with negotiating and obtaining home mortgage loan modifications on behalf of Sanchez.

35. Subsequent to November 2008, Sanchez called Respondent's law office on several occasions, requesting an update on her loan modification. Sanchez spoke to Enrique Duarte ("Enrique") who introduced himself as Respondent's office manager. Enrique told Sanchez that Respondent would handle her case personally.

36. In April 2009, Sanchez was evicted from her home.

37. Respondent did not perform any legal services of value to Sanchez in connection with negotiating and obtaining a home mortgage loan modification on behalf of Sanchez or otherwise advise Sanchez of her legal options. Respondent did not earn any of the \$2,495 advanced legal fees paid by Sanchez.

38. On April 13, 2009, Sanchez went to the office of Home 911 and spoke with the employees of Respondent's law office, requesting a full refund and her client file.

39. On April 14, 2009, Enrique gave Sanchez a partial refund of \$1,995. To date, Respondent has not refunded to Sanchez the balance of the unearned fees.

---

<sup>3</sup> The account number is excluded to protect the account from identity theft.

40. To date, Respondent has not released to Sanchez any of her files or documents.

#### CONCLUSIONS OF LAW:

41. By not taking any action to request or negotiate a modification of Sanchez's mortgage loan, or otherwise advise her of her legal options, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

42. By not refunding to Sanchez the balance of the unearned fees, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

43. By not releasing to Sanchez her files and documents, Respondent failed to promptly return client papers and property upon request, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

#### Case No. 09-O-17409 (Complainant: Reymundo Acosta)

#### FACTS:

44. On April 23, 2009, Reymundo Acosta ("Acosta") contacted Aqua Strategic Solutions ("Aqua"), a loan modification relief company located in Whittier (the "Whittier office") regarding obtaining a loan modification on his residence. At the Whittier office, Acosta met Respondent who represented to Acosta that he would be able to obtain a loan modification of Acosta's existing loan for \$2,495 in advanced legal fees. At the time Respondent made such representation to Acosta, he had not seen Acosta's financial documentation and had no basis to represent that he would be able to obtain loan modification on Acosta's behalf.

45. On April 23, 2009, relying on Respondent's representation, Acosta signed a retainer agreement with the Law Offices of Gary D. Olive DBA Aqua Strategic and third party authorizations, authorizing Respondent to contact Bank of America Home Loans Servicing, LP ("BAC Home Loans"). The retainer agreement stated that Respondent's failure to modify the client's existing loan would result in a refund of \$1,250. On April 23, 2009, Acosta paid an initial \$1,250 in advanced legal fees for Respondent's services.

46. On April 28, 2009, Yessenia, an employee of Respondent's law office, sent the authorization request signed by Acosta to BAC Home Loans. Thereafter, Respondent took no action to request or negotiate a home mortgage loan modification on Acosta's behalf.

47. On May 8, 2009, Cynthia, an employee of Respondent's law office, called the lender and learned through an automated response system that all collection activity had been temporarily suspended, that the Acosta file was already with a plan negotiator pending a possible work out, and that further information would be provided on May 15, 2009.

48. On May 23, 2009, Acosta paid Aqua an additional \$1,245 in advanced legal fees for Respondent's services.

49. On June 4, 2009, Cynthia called the lender and learned that Acosta had been approved for a loan modification and modification documents had been directly sent to Acosta by the lender.



50. On June 4, 2009, Acosta did not accept the terms of the new loan offered by the lender and made an appointment to see Respondent. Respondent's employees did not give Acosta an appointment with Respondent.

51. On June 8, 2009, Respondent told the employees in his law office to discontinue work on Acosta's file.

52. On June 10, 2009, Acosta called Respondent's law office, requesting to see the documentation sent by Respondent's law office to the lender. Respondent's law office did not provide Acosta with any documentation.

53. Between June 15 and September 17, 2009, Acosta emailed Respondent three times and sent him a certified letter, inquiring about the status of his loan modification. Respondent did not respond to Acosta's emails and letter.

54. On September 17, 2009, Acosta requested a refund of the unearned legal fees. Respondent received the request but failed to provide a refund to Acosta.

55. On September 28, 2009, in response to Acosta's request for a refund, Respondent's law office sent Acosta a "cancellation letter," withdrawing from representing Acosta in his loan modification matter.

56. Respondent did not provide any services of value to Acosta. Respondent did not earn any of the \$2,495 fees paid by Acosta.

57. To date, Respondent has not refunded any portion of \$2,495 in unearned attorney fees to Acosta.

#### CONCLUSIONS OF LAW:

58. By not taking any action to request or negotiate a home mortgage loan modification on behalf of Acosta, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

59. By not responding to Acosta's emails and certified letter, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services in willful violation of Business and Professions Code section 6068(m).

60. By not refunding any portion of the \$2,495 in unearned attorney fees to Acosta, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

#### Case No. 09-O-17785 (Complainant: Martha Sanchez)

#### FACTS:

61. In March 2009, Martha Sanchez ("Sanchez") contacted Aqua Strategic Solutions ("Aqua"), a loan modification relief company located in Whittier (the "Whittier office") regarding obtaining assistance with her equity line of credit. In early March 2009, Sanchez, accompanied by her daughter Mercy Peralta ("Mercy") met with Nancy Duarte ("Duarte"). Duarte introduced herself as the office manager and recommended that Sanchez file bankruptcy and come back with a cashier's check of \$2,500, made payable to Aqua Strategic Solutions.

62. A few days after their first meeting with Duarte, Sanchez and Mercy came back to the Whittier office and met with Respondent and Duarte. Respondent advised Sanchez to pursue a Chapter 7 bankruptcy. Respondent represented to Sanchez that he would negotiate with the bank regarding her equity line of credit. Relying on Respondent's representation, Sanchez signed a retainer agreement with the Law Offices of Gary D. Olive DBA Aqua Strategic. In the presence of Respondent, Sanchez gave to Duarte a \$2,500 cashier's check, payable to Aqua Strategic.

63. Thereafter, Respondent failed to file a bankruptcy petition on behalf of Sanchez or take any legal action on her behalf.

64. Respondent did not provide any services of value to Sanchez. Respondent did not earn any of the \$2,500 fees paid by Sanchez.

65. In August 2009, Sanchez hired another attorney, Leonora Gorelik ("Gorelik") to represent her. On August 3, 2009, Gorelik sent a letter to Respondent via facsimile and mail, requesting that Respondent refund the unearned advanced fees paid by Sanchez. Respondent received Gorelik's letter.

66. On September 3, 2009, Respondent mailed a letter to Sanchez, agreeing to a refund within thirty days.

67. In November 2009, when she did not receive a refund, Sanchez filed a complaint with the State Bar.

68. On June 25, 2010, Respondent refunded Sanchez's unearned fees by mailing Sanchez \$2,500 in money orders.

#### CONCLUSIONS OF LAW:

69. By failing to file a bankruptcy petition on behalf of Sanchez or otherwise advise the client of her legal options concerning her equity line of credit, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

70. By waiting until Sanchez had filed a complaint with the State Bar, more than a year after Sanchez had paid the advanced legal fees, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

#### Case No. 09-O-18921 (Complainant: Javier Romero)

#### FACTS:

71. On February 7, 2009, Javier Alfaro Romero ("Romero") contacted Aqua Strategic Solutions ("Aqua"), a loan modification relief company located in Whittier (the "Whittier office") regarding obtaining a loan modification on his residence. At the Whittier office, Romero met Leticia Vasquez ("Vasquez"), a new employee of Respondent's law office. Vasquez, working from a script given to her by Yessenia Cardenas, another employee of Respondent's law office, represented to Romero that Respondent would be able to obtain a loan modification on Romero's existing loan for \$2,495 in advanced legal fees. Relying on Vasquez's representation regarding Respondent's legal services, Romero signed a retainer agreement with

the Law Offices of Gary D. Olive DBA Aqua Strategic and third party authorizations to contact the lender. The retainer agreement stated that Respondent's failure to modify the client's existing loan would result in a refund of \$2,000.

72. On February 15, 2009, Romero paid \$2,495 in advanced legal fees for Respondent's services. Thereafter, Respondent took no action to request or negotiate a home mortgage loan modification on Romero's behalf.

73. Respondent did not provide any services of value to Romero. Respondent did not earn any of the \$2,495 fees paid by Romero.

74. On April 8, 2009, Maggie, an employee of Respondent's law office, called Bank of America, the lender on Romero's residence, and learned that Romero's property was in foreclosure status.

75. On May 15, 2009, after learning from the bank that his house was in foreclosure status, Romero filed a complaint against Respondent and Aqua to the Los Angeles County Department of Consumer Affairs, requesting the Department's help to obtain a refund of the \$2,495 he had paid to Respondent.

76. On July 31, 2009, the Department of Consumer Affairs mailed Respondent a letter stating that Respondent violated the Mortgage Foreclosure Consultant Act when Respondent's employees obtained compensation from clients prior to providing the clients with services. The Department of Consumer Affairs requested that Respondent refund to Romero the \$2,495 advanced legal fees paid by Romero. Respondent received the letter from the Department of Consumer Affairs but failed to provide a refund to Romero.

#### CONCLUSIONS OF LAW:

77. By not taking any action to request or negotiate a home mortgage loan modification on behalf of Romero, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

78. By not refunding any portion of the \$2,495 in unearned attorney fees to Romero, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

#### Case No. 09-O-19174 (Complainant: Juan Plata)

#### FACTS:

79. On April 11, 2009, Juan Plata ("Plata") contacted Aqua Strategic Solutions ("Aqua"), a loan modification relief company located in Whittier (the "Whittier office") regarding obtaining a loan modification on his residence. At the Whittier office, Plata met with Nancy Duarte ("Duarte") who introduced herself as an employee of Respondent's law office. Plata explained to Duarte that he wanted to reduce his monthly mortgage payments. Duarte represented to Plata that Respondent would be able to obtain a loan modification on Plata's existing loan for \$2,495 in advanced legal fees. Duarte also told Plata that he would get a refund of half of the advanced fees if Respondent failed to modify his loan. Duarte then presented Plata with a retainer agreement which Plata could not understand because it was written in English. Relying on Duarte's representation regarding Respondent's legal services, Plata signed a retainer agreement with the Law Offices of Gary D. Olive DBA Aqua Strategic Solutions and third party

authorizations to contact the bank and paid an initial \$1,250 in advanced fees for Respondent's legal services.

80. On April 29, 2009, Edgar, an employee of Respondent's law office, called Wachovia Mortgage ("Wachovia") and learned that Plata did not qualify for any modification programs because he was current on his payments. On the same day, Respondent's employees drafted a hardship letter for Plata's signature. Plata signed the hardship letter without fully understanding its contents because it was written in English.

81. On May 13, 2009, Plata paid a further sum of \$1,245 in advanced fees for Respondent's legal services.

82. On May 15, 2009, Wachovia rejected the hardship letter which incorrectly stated that Plata was "4 month behind" on his house payments.

83. In June 2009, Plata complained to Respondent's employees about the inaccuracies in the hardship letter and faxed them a hardship letter written in Spanish to be translated into English by Respondent's office. On June 24, 2009, Respondent's employees sent a second hardship letter to Wachovia.

84. On June 25 and July 14, 2009, Sally Welsh ("Sally"), an employee of Respondent's law office, called Wachovia and learned that it had no modification in place for any of their loans. Thereafter, Respondent failed to take any action on behalf of Plata or advise the client of his legal options.

85. From the time of employment by Plata to August 2009, Respondent did not perform any legal services of value to Plata in connection with negotiating and obtaining home mortgage loan modifications on Plata's behalf. Respondent did not earn any of the \$2,495 fees paid by Plata.

86. On August 13, 2009, Plata had an appointment with Thomas, an employee of Respondent's law office, to discuss his home loan. Dissatisfied with Thomas who knew nothing about his case, Plata mailed a letter to Respondent on or about August 13, 2009, requesting a full refund. Respondent received Plata's letter.

87. In August 2009, Plata, accompanied by his daughter, Priscilla Plata ("Priscilla"), scheduled an appointment with Respondent. Upon their arrival to Respondent's office, Respondent would not allow Plata and Priscilla into his office and told them that he would not give Plata a refund. Thereafter, Respondent sent Plata a letter, stating that his office has substantially performed on behalf of Plata and that Plata was not entitled to a refund.

88. To date, Respondent has not refunded any portion of the \$2,495 advanced legal fees to Plata.

#### CONCLUSIONS OF LAW:

89. By not taking any action to negotiate a home mortgage loan modification on behalf of Plata or advise Plata of his legal options, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

90. By not refunding any portion of the \$2,495 unearned attorney fees to Plata, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 10-O-00336 (Complainants: Odilia and Nestor Gutierrez)

FACTS:

91. On January 24, 2009, Odilia and Nestor Gutierrez (collectively, "the Gutierrezes") contacted Aqua Strategic Solutions ("Aqua"), a loan modification relief company located in Whittier (the "Whittier office") regarding obtaining a loan modification on his residence. At the Whittier office, the Gutierrezes met Aurora, an employee of Respondent's law office. Aurora represented to the Gutierrezes that Respondent would be able to obtain a loan modification on their existing loan for \$2,495 in advanced legal fees. Relying on Aurora's representation regarding Respondent's legal services, Odilia Gutierrez ("Odilia") signed a retainer agreement with the Law Offices of Gary D. Olive DBA Aqua Strategic and third party authorizations to contact the lender and paid an initial \$1,250 in advanced fees for Respondent's legal services. The retainer agreement stated that Respondent's failure to modify the client's existing loan would result in a refund of \$2,000.

92. On February 20, 2009, the Gutierrezes paid a further sum of \$1,245 in advanced fees for Respondent's legal services.

93. On August 17, 2009, Nestor Gutierrez ("Nestor") brought to Respondent's law office a modification package he had received from the bank. Respondent's employees sent the package back to the lender with incorrect and incomplete information.

94. On October 27, 2009, Cynthia, an employee of Respondent's law office, called the bank and learned that the Gutierrezes' file was closed as a result of the incorrect and incomplete information. Cynthia also learned that a trustee sale of the Gutierrezes' residence would take place on November 18, 2009. Thereafter, Respondent took no action to prevent the trustee sale on behalf of the Gutierrezes, or otherwise advise his clients of their legal options.

95. After learning of the pending trustee sale in November 2009, the Gutierrezes hired attorney Todd Cleary who obtained a trial payment plan with the lender on behalf of the Gutierrezes.

96. Respondent did not provide any services of value to the Gutierrezes. Respondent did not earn any of the \$2,495 fees paid by the Gutierrezes.

97. In December 2009, Odilia spoke to Respondent's employees and requested a refund of the \$2,495 paid to Respondent. Respondent failed to provide a refund to the clients.

CONCLUSIONS OF LAW:

98. By not taking any action to request or negotiate a home mortgage loan modification on behalf of the Gutierrezes, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

99. By not refunding any portion of the \$2,495 in unearned attorney fees to the Gutierrezes, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

FACTS:

100. In August 2009, Claudia Navarro ("Navarro") contacted Aqua Strategic Solutions ("Aqua"), a loan modification relief company located in Whittier (the "Whittier office"), regarding obtaining a loan modification on her residence. At the Whittier office, Navarro met with Eustorgio, an employee of Respondent's law office. Eustorgio represented to Navarro that Respondent would be able to obtain a loan modification on Navarro's existing loan for \$2,495 in advanced legal fees. Relying on Eustorgio's representation regarding Respondent's legal services, Navarro signed a retainer agreement with the Law Offices of Gary D. Olive DBA Aqua Strategic Solutions and third party authorizations to contact the bank and paid an initial check of \$1,250 for Respondent's legal services.

101. In mid September 2009, Navarro paid a second check of \$1,245 for Respondent's legal services.

102. On September 15, 2009, Yessenia, an employee of Respondent's law office, called Navarro requesting bank statements, a hardship letter, tax returns, and proof of unemployment. Navarro immediately sent the requested documents to Respondent's law office. Yessenia did not forward Navarro's documents to the lender. Thereafter, Respondent took no action to request a modification of Navarro's loan.

103. On September 25, 2009, Respondent sent Navarro a letter informing clients that he was relocating his law office from the Whittier office to his law office in Los Angeles. Respondent further informed Navarro that Yessenia would no longer be able to answer questions regarding Navarro's case.

104. On October 23, 2009, Respondent received an email from Yessenia, informing him that Navarro's second check of \$1,245 had bounced. Yessenia's email stated that no further work would be done on Navarro's case until she made up her last payment.

105. In October 2009, Navarro called Respondent at his new office and complained that her house was going into foreclosure. Respondent told Navarro that her second check for \$1,245 had been returned for insufficient funds and that he needed a certified check for \$1,245, made directly payable to him, in order for him to prevent the foreclosure.

106. On October 27, 2009, Navarro met with Respondent at his law office and paid him \$1,245 by certified check. Thereafter, Respondent took no action to prevent the foreclosure or otherwise advise Navarro of her legal options.

107. On October 27, 2009, by demanding and collecting a \$1,245 advance fee from Navarro to prevent the foreclosure of her residence, Respondent violated California Civil Code section 2944.7(a)(1), effective October 11, 2009, which makes it illegal for attorneys to receive any compensation until services have been fully performed in loan modification matters.

108. Respondent did not perform any legal services of value to Navarro in connection with negotiating and obtaining a home mortgage loan modification on Navarro's behalf. Respondent did not earn any of the \$2,495 fees paid by Navarro.

109. In November 2009, Navarro emailed Respondent, complaining about his lack of response to her status inquiries and requesting a refund of her advanced legal fees. Respondent received Navarro's email but failed to provide a refund to Navarro.

#### CONCLUSIONS OF LAW:

110. By not taking any action to request or negotiate a home mortgage loan modification on behalf of Navarro or otherwise advising Navarro of her legal options, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

111. By charging and receiving an advance fee after October 11, 2009, in exchange for agreeing to perform loan modification services in violation of California Civil Code section 2944.7(a)(1), Respondent willfully violated the Business and Professions Code section 6106.3.

112. By not refunding any portion of the \$2,495 in unearned attorney fees to Navarro, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

#### Case No. 10-O-02451 (Complainant: Raquel Tovar)

#### FACTS:

113. On November 3, 2008, Raquel Tovar ("Tovar") called Home 911, a loan modification relief company regarding obtaining a loan modification on her residence. Tovar spoke to Rafael Murillo ("Murillo"). On the same day, Murillo came to Tovar's residence. Murillo represented to Tovar that Respondent would be able to obtain a loan modification on her existing loan for \$2,495 in advanced legal fees. Relying on Murillo's representation regarding Respondent's legal services, Tovar signed several documents that Murillo brought to her house, to wit, third party authorization to contact her lender, a one-page "Attorney Client Fee Contract" providing that Respondent's law office would provide legal services to Tovar regarding her residence, and a one-page "Loan Mitigation/ Modification & Presentation Fee Acknowledgment" (the "fee receipt") requiring payment of \$2,495. Pursuant to the fee receipt, Tovar would receive a \$2,000 refund if the loan modification was unsuccessful. On November 3, 2008, Tovar paid \$2,495 for Respondent's legal services.

114. Thereafter, Respondent provided no legal services to Tovar in connection with negotiating and obtaining a home mortgage loan modification on behalf of Tovar.

115. From early 2009 through November 2009, Tovar repeatedly called Home 911, inquiring about the status of her loan modification and requesting to speak with Respondent. Respondent's employees repeatedly responded that Respondent was too busy to speak with her.

116. Respondent did not perform any legal services of value to Tovar in connection with negotiating and obtaining a home mortgage loan modification on behalf of Tovar. Respondent did not earn any of the \$2,495 advanced legal fees paid by Tovar.

117. In November 2009, Tovar retained attorney Christopher Persaud to write a letter to Respondent, requesting a refund. Respondent received the letter but did not provide a refund.

118. To date, Respondent has not refunded any portion of the \$2,495 advanced legal fees to Tovar.

### CONCLUSIONS OF LAW

119. By not taking any action to request or negotiate a home mortgage loan modification on behalf of Tovar, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

120. By not refunding any portion of the \$2,495 in unearned attorney fees to Tovar, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

### Case No. 10-O-04053 (Complainant: Maria D. Cubias)

### FACTS:

121. On November 6, 2008, Maria Cubias ("Cubias") called Home 911, a loan modification relief company regarding obtaining a loan modification on her residence. Cubias spoke to Jaime Antillon ("Antillon"). On the same day, Antillon came to Cubias's residence. Antillon represented to Cubias that Respondent would be able to obtain a loan modification on Cubias's existing loan for \$2,495 in advanced legal fees. Relying on Antillon's representation regarding Respondent's legal services, Cubias signed several documents that Antillon brought to her house, to wit, third party authorization to contact her lender, a one-page "Attorney Client Fee Contract" providing that Respondent's law office would provide legal services to Cubias regarding her residence, and a one-page "Loan Mitigation/Modification & Presentation Fee Acknowledgment" (the "fee receipt") requiring payment of \$2,495. Pursuant to the fee receipt, Cubias would receive a \$2,000 refund if the loan modification was unsuccessful. On November 6, 2008, Cubias paid an initial payment of \$1,247.50 for Respondent's legal services. About a month later, Cubias paid a further sum of \$1,247.50 for Respondent's legal services.

122. Between November 2008 and March 2009, Cubias provided to Home 911 the documentation requested by Home 911, including bank statements, income and expense worksheet, and tax returns.

123. Thereafter, Respondent provided no legal services to Cubias in connection with negotiating and obtaining home mortgage loan modifications on behalf of Cubias.

124. In February 2009, and again in or about March 2009, Cubias's lender, Countrywide, mailed letters to Cubias, informing her that it would offer her a loan modification package if she was interested. Cubias called Respondent's law office and told Jaime Duarte ("Jaime") about Countrywide's offer. Jaime represented to Cubias that Countrywide's loan modification packages would not be as advantageous to Cubias as the modifications that Home 911 and Respondent could obtain for Cubias. Cubias believed Jaime.

125. From early 2009 through May 2009, Cubias repeatedly called Home 911, inquiring about the status of her loan modification and requesting to speak with Respondent. Jaime repeatedly responded that Respondent was too busy to speak with her.



126. On May 6, 2009, Respondent sent a letter to Cubias, representing that Respondent's law office was working on a better loan modification than the one offered by Countrywide to Cubias. Respondent did not follow up on his representation to Cubias. Ultimately, Cubias accepted a loan modification package offered by Bank of America when it took over Countrywide.

127. Respondent did not perform any legal services of value to Cubias in connection with negotiating and obtaining a home mortgage loan modification on behalf of Cubias. Respondent did not earn any of the \$2,495 advanced legal fees paid by Cubias.

128. In May 2009, Cubias went to the office of Home 911 and spoke with the employees of Respondent's law office, requesting a refund. Respondent's employees refused to give her a refund.

129. To date, Respondent has not refunded any portion of the \$2,495 advanced legal fees to Cubias.

#### CONCLUSIONS OF LAW:

130. By not taking any action to request or negotiate a home mortgage loan modification on behalf of Cubias, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

131. By not refunding any portion of the \$2,495 in unearned attorney fees to Cubias, Respondent willfully failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

#### Case No. 10-O-04083 (Complainant: Pedro Salinas)

#### FACTS:

132. On October 3, 2009, Pedro Salinas ("Salinas") contacted Home 911, a loan modification relief company regarding obtaining a loan modification on his residence. Salinas spoke to Jaime Duarte ("Jaime"). Jaime represented to Salinas that Respondent would be able to obtain a loan modification on Cubias's existing loan for \$3,000 in advanced legal fees. Relying on Jaime's representation regarding Respondent's legal services, Salinas signed a retainer for modification of loan and paid an initial payment of \$1,200 for Respondent's legal services.

133. On October 17, 2009, Salinas paid a further sum of \$500 for Respondent's legal services. By demanding and collecting a \$500 advance fee from Salinas to obtain a loan modification on his residence, Respondent violated California Civil Code section 2944.7(a)(1), effective October 11, 2009, which makes it illegal for attorneys to receive any compensation until services have been fully performed in loan modification matters.

134. On February 3, 2010, Respondent's law office sent Salinas a trial modification package for a three-month period.

## CONCLUSIONS OF LAW:

135. By charging and receiving an advance fee after October 11, 2009, in exchange for agreeing to perform loan modification services in violation of California Civil Code section 2944.7(a)(1), Respondent willfully violated the Business and Professions Code section 6106.3.

### Case No. 10-O-04092 (Complainants: Jose and Maria Zepeda)

## FACTS:

136. On August 28, 2008, Jose Renan Zepeda ("Zepeda") and Maria Zepeda ("Maria") (collectively, the "Zepedas") contacted the office of Ocwen Solutions, LLC, a company located in Hawthorne (the "Hawthorne office"), regarding obtaining loan modification on their principal residence. The Zepedas met with Susy Virrey ("Virrey") who introduced herself as an employee of Respondent. Virrey represented to the Zepedas that Respondent would be able to obtain loan modifications on the Zepedas' existing loan for \$2,495 in advanced legal fees. Relying on Virrey's representation regarding Respondent's legal services, the Zepedas signed a retainer agreement with the Law Offices of Gary D. Olive and third party authorizations to contact Indymac, the lender, and paid an initial check of \$1,500 in advanced fees for Respondent's legal services. A few days later, Virrey called the Zepedas and told them that their case was reassigned to Nancy Duarte ("Duarte") at a new office location in Whittier (the "Whittier office".)

137. On September 16, 2008, the Zepedas met Duarte at the Whittier office. Duarte introduced herself as the employee newly assigned to their modification case. The Zepedas paid a further sum of \$995 for Respondent's legal services. They told Duarte that they also wanted to obtain a loan modification on a rental property they owned in Victorville, California (the "rental property".) The lender on the rental property was Provident Funding. Duarte represented to the Zepedas that Respondent would be able to obtain a loan modification on the Zepedas' rental property for \$2,495 in advanced legal fees.

138. On October 21, 2008, Respondent's office sent the authorizations to Indymac, the lender for the Zepedas' principal residence.

139. On December 13, 2008, the Zepedas provided Respondent's office with the necessary documentation to initiate the loan modification process with Indymac.

140. On January 12, 2009, the Zepedas returned to the Whittier office to pay the advanced legal fees regarding the loan modification on the rental property. Duarte requested that the Zepedas issue a check payable to Aqua Strategic Solutions, a new name for Ocwen Solutions, explaining that Ocwen Solutions was being sued for using the name "Ocwen" which was already taken by another company. The Zepedas paid Duarte a \$2,495 for Respondent's legal services in connection with the rental property. The Zepedas provided Respondent's office with the necessary documentation to initiate the loan modification process with Provident Funding, the lender for the Zepedas' rental property.

141. Thereafter, Respondent took no action to request a modification of the Zepedas' mortgage loans on their principal residence or rental property, or otherwise advise them of their legal options.

142. In late January 2009, the Zepedas requested and obtained a copy of the documents sent to the lenders on their behalf. The documents sent to Indymac contained information that was inconsistent

with the information provided by the Zepedas to Respondent's office. As to the rental property, nothing had been sent to Provident Funding.

143. Respondent provided no legal services of value to the Zepedas in connection with negotiating and obtaining a loan modification on behalf of the Zepedas. Respondent did not earn any of the \$4,495 fees paid by the Zepedas.

144. In November 2009, the Zepedas hired attorney Alan Sheats ("Sheats") to obtain a refund of the \$4,495 advanced legal fees paid by the Zepedas. On November 18, 2009, Sheats mailed a letter to Respondent's office in Los Angeles, requesting a refund of unearned fees on behalf of the Zepedas. Respondent received Sheats' letter but did not respond.

145. To date, Respondent has not refunded any portion of the \$4,495 in advanced legal fees paid by the Zepedas.

#### CONCLUSIONS OF LAW:

146. By not taking any action to request or negotiate a modification of the Zepedas' mortgage loans on their principal residence or rental property, or otherwise advise them of their legal options, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

147. By not refunding any portion of the \$4,495 in unearned attorney fees to the Zepedas, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

#### Case No. 10-O-04832 (Complainant: Blanca Ramirez)

#### FACTS:

148. On May 18, 2009, Blanca Ramirez ("Ramirez") contacted Aqua Strategic Solutions ("Aqua"), a loan modification relief company located in Whittier (the "Whittier office") regarding obtaining a loan modification on his residence. At the Whittier office, Ramirez met with Nancy Duarte ("Duarte") who introduced herself as an employee of Respondent's law office. Duarte represented to Ramirez that Respondent would be able to obtain a loan modification on Ramirez's existing loan for \$2,495 in advanced legal fees. Relying on Duarte's representation regarding Respondent's legal services, Ramirez signed a retainer agreement with the Law Offices of Gary D. Olive DBA Aqua Strategic Solutions and third party authorizations to contact the bank and paid \$2,495 in advanced fees for Respondent's legal services.

149. On October 14, 2009, Violet Zabalza ("Zabalza"), an employee of Respondent's law office, notified Respondent that the modification package submitted to the bank on behalf of Ramirez was incomplete and had to be resubmitted in its entirety.

150. On October 20, 2009, Ramirez met with Respondent who told his client that he would resubmit a modification proposal to the bank on her behalf. Thereafter, Respondent took no action to request a modification of Ramirez's mortgage loan on her principal residence, or otherwise advise Ramirez of her legal options.

151. Respondent provided no legal services of value to Ramirez in connection with negotiating and obtaining a loan modification on her behalf. Respondent did not earn any of the \$2,495 fees paid by Ramirez.

152. To date, Respondent has not refunded any portion of the \$2,495 in advanced legal fees paid by Ramirez.

#### CONCLUSIONS OF LAW:

153. By not taking any action to request or negotiate a modification of Ramirez's mortgage loan on her principal residence, or otherwise advise her of her legal options, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

154. By not refunding any portion of the \$2,495 in unearned attorney fees to Ramirez, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

#### Case No. 10-O-04838 (Complainant: Juan Villalobos)

#### FACTS:

155. On July 2, 2008, Juan Villalobos ("Villalobos") and his brother-in-law, Jose Vega ("Vega"), contacted Home 911, a loan modification relief company regarding obtaining a loan modification on the residence which was owned by Villalobos and Vega. Villalobos spoke to Judith. Judith represented to Villalobos that Respondent would be able to obtain a loan modification on his existing loan for \$2,495 in advanced legal fees. Relying on Judith's representation regarding Respondent's legal services, Villalobos signed several documents, to wit, third party authorization to contact her lender, a one-page "Attorney Client Fee Contract" providing that Respondent's law office would provide legal services to Villalobos regarding his residence, and a one-page "Loan Mitigation/Modification & Presentation Fee Acknowledgment" (the "fee receipt") requiring payment of \$2,495. Pursuant to the fee receipt, Villalobos would receive a \$2,000 refund if the loan modification was unsuccessful. On July 2, 2008, Villalobos paid \$2,495 for Respondent's legal services.

156. Thereafter, Respondent provided no legal services to Villalobos in connection with negotiating and obtaining a home mortgage loan modification on his behalf.

157. On December 21, 2009, the bank mailed to Villalobos a Notice of Trustee's Sale. Villalobos' sister, Felipa, immediately forwarded the notice to Respondent's law office and requested an urgent response from Respondent. Respondent received the notice but failed to respond. Villalobos and Vega lost their home to foreclosure.

158. Respondent did not perform any legal services of value to Villalobos in connection with negotiating and obtaining a home mortgage loan modification on his behalf. Respondent did not earn any of the \$2,495 advanced legal fees paid by Villalobos.

159. To date, Respondent has not refunded any portion of the \$2,495 advanced legal fees to Villalobos.

## CONCLUSIONS OF LAW

160. By not taking any action to request or negotiate a home mortgage loan modification on behalf of Villalobos, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

161. By not refunding any portion of the \$2,495 in unearned attorney fees to Villalobos, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

### Case No. 10-O-04840 (Complainant: Leticia R. Vasquez)

#### FACTS:

162. In August 2008, Leticia R. Vasquez ("Vasquez") called Ocwen Solutions, a loan modification relief agency located in Hawthorne (the "Hawthorne office"), regarding regarding obtaining a loan modification on two properties, her residence in West Covina (the "West Covina property"), and a rental property in El Monte (the "El Monte property"). In or about early September 2008, at a first meeting in the Hawthorne office, Vasquez met with Carlos Navar ("Navar"). Navar, an employee of Ocwen Solutions, told Vasquez that Ocwen Solutions worked with several attorneys, experienced in loan modifications. Navar further told Vasquez that Ocwen Solutions was changing its name to Aqua Strategic Solutions ("Aqua") because Ocwen Solutions was being sued for using the name "Ocwen" which was already used by another company. Navar gave Vasquez a second appointment at a new office location in Whittier (the "Whittier office".)

163. On September 4, 2008, Vasquez went to the Whittier office and met Nancy Duarte ("Duarte") who introduced herself as a real estate broker and the owner of Ocwen Solutions/Aqua Strategic Solutions. Duarte represented to Vasquez that Aqua worked with an experienced attorney and that Respondent would be able to obtain loan modifications for Vasquez's two properties for a total amount of \$3,995. Relying on Duarte's representation regarding Respondent's legal services, Vasquez signed a retainer agreement with the Law Offices of Gary D. Olive DBA Ocwen Solutions and paid an initial check of \$2,495, for Respondent's legal services in connection with the loan modification with GMAC, the lender on Vasquez's residence.

164. On September 18, 2008, Vasquez paid a further sum of \$1,500 for Respondent's legal services in connection with the loan modification with Bank of America, the lender on the rental property.

165. In September 2008, Duarte offered a job to Vasquez to sign up clients for loan modifications after Duarte learned that Vasquez was a court interpreter, proficient both in Spanish and English. Vasquez agreed to work for Respondent's Law Offices DBA Aqua Strategic Solutions. Vasquez worked for Respondent's law offices for about three months.

166. From the time of employment by Vasquez to January 2009, Respondent took no action to negotiate and obtain modification of the loans on Vasquez's residence or rental property.

167. Respondent provided no legal services of value to Vasquez in connection with negotiating and obtaining a loan modification on behalf of Vasquez. Respondent did not earn any of the \$3,995 fees paid by Vasquez.

168. Realizing that Respondent was not working on her loan modifications, in or about January 2009, Vasquez stopped working for Respondent's law offices, and sent Respondent a letter, requesting a refund. Respondent received Vasquez's letter.

169. On April 27, 2009, Respondent sent Vasquez a letter, agreeing to give her a \$3,000 refund.

170. On August 18, 2009, when Vasquez did not receive a refund from Respondent, Vasquez filed a small claims action against Respondent, Case No. WH 09S00982. On October 28, 2009, Vasquez obtained a judgment of \$4,690 in principal and \$50 in costs against Respondent, Ocwen Solutions, and Aqua Strategic Solutions.

171. On December 23, 2010, Respondent gave Vasquez a \$500 money order, as a partial refund.

172. On March 1, 2011, Respondent mailed to Vasquez another partial refund of \$500.

173. To date, Respondent has not refunded any other portion of the \$3,995 in advanced legal fees paid by Vasquez.

#### CONCLUSIONS OF LAW:

174. By not taking any action to request and negotiate a modification of Vasquez's mortgage loans on her residence or rental property, or otherwise advise Vasquez of her legal options, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

175. By waiting more than two years after Vasquez had paid \$3,995 in advanced legal fees to refund only \$1,000 to Vasquez, Respondent willfully failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

#### Case No. 10-O-05609 (Complainant: Juan M. Torres)

#### FACTS:

176. On April 14, 2009, Juan M. Torres ("Torres") went to the Law Offices of Gary D. Olive DBA Aqua Strategic Solutions, located in Whittier (the "Whittier office"), regarding obtaining a loan modification on his residence. Torres had difficulties meeting the payments on his second loan with Bank of America. Torres spoke with Jose Castanedas ("Castanedas"), an employee of Respondent's law office, who represented to Torres that Respondent would be able to obtain loan modifications on Torres's second loan for \$2,495 in advanced legal fees. Relying on Castanedas's representation regarding Respondent's legal services, Torres signed a retainer agreement and paid an initial \$1,250 for Respondent's legal services. The retainer agreement stated that the fee of \$2,495 was non-refundable and "[i]n the event no work is performed on Client's behalf, Client will be refunded the amount of \$1,295."

177. On April 30, 2009, Torres went back to Respondent's law office and paid a further sum of \$1,245 for Respondent's legal services. Thereafter, Respondent took no action to request a loan modification on behalf of Torres, or otherwise advise Torres of his legal options.

178. Between May and October 2009, Torres repeatedly called Respondent's law office and left messages inquiring about the loan modification on his second loan. Torres' calls were not returned.

179. In early October 2009, Torres received from Respondent a notice that Respondent moved to a new location in Los Angeles (the "Los Angeles office") and any question pertaining to his case should be directed to Susie Garcia ("Garcia").

180. From early October to December 2009, Torres repeatedly called Respondent's Los Angeles office and left messages asking for a status update. Again, Torres's calls were not returned.

181. On January 8, 2010, Torres finally succeeded in reaching Respondent by telephone. Respondent had no information regarding Torres' loan modification matter and told him he would call back. Respondent did not call Torres back.

182. In March 2010, Torres received a call from the lender on the second loan. Torres learned that Respondent's law office had never contacted Bank of America.

183. Respondent provided no legal services of value to Torres in connection with negotiating and obtaining a loan modification on behalf of Torres. Respondent did not earn any of the \$2,497.50 advanced fees paid by Torres.

184. On April 19, 2010, Torres mailed a certified letter to Respondent, requesting a refund of unearned fees. Respondent received the letter but failed to provide a refund.

185. To date, Respondent has not refunded any portion of the \$2,497.50 in advanced legal fees paid by Torres.

#### CONCLUSIONS OF LAW:

186. By not taking any action to request and negotiate a loan modification on behalf of Torres, or otherwise advise Torres of his legal options, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

187. By not refunding any portion of the \$2,495.50 in unearned attorney fees to Torres, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

#### Case No. 10-O-08697 (Complainant: Maria Najera)

#### FACTS:

188. On June 19, 2008, Maria Najera ("Najera") contacted Home 911, a loan modification relief company regarding obtaining a loan modification on her residence. Najera spoke to Jaime Duarte ("Jaime"). Jaime represented to Najera that Respondent would be able to obtain a loan modification on her existing loan for \$2,495 in advanced legal fees. Relying on Jaime's representation regarding Respondent's legal services, Najera signed several documents, to wit, third party authorization to contact her lender, a one-page "Attorney Client Fee Contract" providing that Respondent's law office would provide legal services to Villalobos regarding his residence, and a one-page "Loan Mitigation/ Modification & Presentation Fee Acknowledgment" (the "fee receipt") requiring payment of \$2,495.

Pursuant to the fee receipt, Villalobos would receive a \$2,000 refund if the loan modification was unsuccessful. On June 19, 2008, Najera paid an initial \$1,495 for Respondent's legal services.

189. Thereafter, Respondent provided no legal services to Najera in connection with negotiating and obtaining a home mortgage loan modification on her behalf. In April 2009, Najera lost her home to foreclosure.

190. Respondent did not perform any legal services of value to Najera in connection with negotiating and obtaining a home mortgage loan modification on her behalf. Respondent did not earn any of the \$1,495 advanced legal fees paid by Najera.

191. To date, Respondent has not refunded any portion of the \$1,495 advanced legal fees to Najera.

#### CONCLUSIONS OF LAW

192. By not taking any action to request or negotiate a home mortgage loan modification on behalf of Najera, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

193. By not refunding any portion of the \$1,495 in unearned attorney fees to Najera, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Case Nos. 09-O-17409; 09-O-17785;

09-O-18921; 09-O-19174;

10-O-00081; 10-O-00088;

10-O-00336; 10-O-04078;

10-O-04092; 10-O-04405;

10-O-05609; 10-O-05611

194. Respondent, through his staff and agents, advised clients Reymundo Acosta [Case No. 09-O-17409] ("Acosta"), Martha Sanchez [Case no. 09-O-17785] ("Sanchez"), Javier Romero [Case No. 09-O-18921] ("Romero"), Juan Plata [Case No. 09-O-19174] ("Plata"), Nelson Flores [Case No. 10-O-00081] ("Flores"), Gloria Gutierrez [Case No. 10-O-00088] ("Gutierrez"), Odilia and Nestor Gutierrez [Case no. 10-O-00336] (the "Gutierrezes"), Edgar Robles [10-O-04078] ("Robles"), Jose and Maria Zepeda [Case No. 10-O-04092] (the "Zepedas"), Octavio Arreola [Case No. 10-O-04405] ("Arreola"), Juan Torres [10-O-05609], and Alba Rosales [Case No. 10-O-05611] ("Rosales"), to pay advanced legal fees for loan modification services to be performed by Respondent.

195. Respondent agreed that the advanced fees paid for Respondent's legal services by clients Acosta, Sanchez, Romero, Plata, Flores, Gutierrez, the Gutierrezes, Robles, the Zepedas, Arreola, Torres, and Rosales would be made payable to Aqua and directly deposited into Aqua's account.

196. Between in or about January 2009 and August 2009, checks and money orders issued as payments of advanced attorney's fees for Respondent's legal services by Respondent's clients were deposited into Aqua's Business Account, including, but not limited to, the following:



<u>Deposit Date</u>	<u>Amount</u>	<u>Client</u>	<u>Payee</u>
01/15/09	\$1,247.50	Octavio Arreola (Case No. 10-O-04405)	Aqua
01/16/09	\$2,495	Jose R. Zepeda (Case No. 10-O-04092)	Aqua
01/23/09	\$1,247.50	Nelson Flores (Case No. 10-O-00081)	Aqua
02/13/09	\$2,495	Javier Romero (Case No. 09-O-18921)	Aqua
02/20/09	\$1,245	Nestor Gutierrez (Case No. 10-O-00336)	Aqua
02/23/09	\$1,247.50	Nelson Flores (Case No. 10-O-00081)	Aqua
03/05/09	\$1,250	Octavio Arreola (Case No. 10-O-04405)	Aqua
04/21/09	\$2,500	Martha Sanchez (Case No. 09-O-17785)	Aqua
04/23/09	\$1,250	Reymundo Acosta (Case No. 09-O-17409)	Aqua
05/12/09	\$2,495	Alba Rosales (Case No. 10-O-05611)	Aqua
05/22/09	\$1,245	Raymundo Acosta (Case No. 09-O-17409)	Aqua
05/13/09	\$1,245	Juan Plata (Case No. 09-O-19174)	Aqua
05/13/09	\$2,495	Alba L. Rosales (Case No. 10-O-05611)	Aqua
07/01/09	\$1,250	Gloria Gutierrez (Case No. 10-O-00088)	Aqua
07/29/08	\$1,245	Gloria Gutierrez (Case No. 10-O-00088)	Aqua
07/30/09	\$1,245	Juan Torres (Case No. 10-O-05609)	Aqua
08/24/09	\$1,000	Alba L. Rosales (Case No. 10-O-05611)	Respondent
08/24/09	\$1,000	Alba L. Rosales (Case No. 10-O-05611)	Respondent

197. Between January 21, 2009, and August 18, 2009, Nancy Duarte issued checks from the Aqua Business Account to Respondent who endorsed and negotiated them as follows:

<u>Date of Check</u>	<u>Amount of Check</u>	<u>Date of Presentment by Respondent</u>
01/21/09	\$5,000	01/27/09
02/10/09	\$3,500	02/10/09
02/13/09	\$1,000	02/14/09
03/02/09	\$3,500	03/06/09
03/19/09	\$2,100	03/20/09
03/30/09	\$1,800	04/04/09
04/03/09	\$2,100	04/14/09
05/03/09	\$1,500	05/13/09
05/15/09	\$1,200	05/19/09
05/19/09	\$1,600	05/19/09
06/07/09	\$1,500	06/10/09
06/16/09	\$1,500	06/20/09
07/09/09	\$1,500	07/09/09
07/30/09	\$ 750	07/30/09
08/04/09	\$ 750	08/04/09
08/18/09	\$2,000	08/20/09

198. Between January 21, 2009, and August 18, 2009, Respondent accepted and negotiated at least \$31,300 in checks issued by Nancy Duarte from the Aqua Business Account.

## CONCLUSIONS OF LAW:

199. By (i) allowing Aqua's employees to represent to clients that Respondent, doing business as Aqua Strategic Solutions, would be performing legal services and/or negotiating loan modifications on behalf of those clients; (ii) agreeing that advanced fees paid by the clients be directly deposited into Aqua's business checking account which belonged to Nancy Duarte, a non-lawyer ; and (iii) accepting and negotiating checks issued by Nancy Duarte to Respondent, Respondent shared directly or indirectly legal fees with a person who is not a lawyer, in violation of Rules of Professional Conduct, rule 1-320.

### **FEE ARBITRATION CONDITION IN CASE NOS. 10-O-00081 (complainant: Nelson Flores), 10-O-00088 (complainant: Gloria Gutierrez), 10-O-04078 (complainant: Edgar Robles), 10-O-04083 (complainant: Pedro Salinas), 10-O-04405 (complainant: Octavio Arreola), and 10-O-05611 (complainant: Alba Rosales):**

Within 120 days from the effective date of the discipline herein, Respondent hereby agrees to:

- (i) Send to Nelson Flores, Gloria Gutierrez, Edgar Robles, Pedro Salinas, Octavio Arreola, and Alba Rosales a letter, notifying them that Respondent is required by court order to initiate, pay for, and participate in State Bar Mandatory Fee Arbitration. The purpose of the arbitration is to determine whether Respondent had earned all fees and/or costs paid by the client to Respondent.
- (ii) Mail a request for Arbitration of a Fee Dispute with the filing fee [5% of the disputed amount] to the State Bar Mandatory Fee Arbitration ("FA") Program. The FA Program will notify the Joneses of Respondent's initiation of a fee arbitration and the client will have thirty (30) days to communicate his/her agreement to arbitrate to the FA Program.
- (iii) Abide by any final arbitration award.
- (iv) Respondent shall provide proof of compliance with this condition to the State Bar's Office of Probation.

### **AUTHORITIES SUPPORTING DISCIPLINE.**

#### Standards Pertaining to Sanctions for Professional Misconduct:

Standard 2.4(a): Culpability of a member of a pattern of wilfully failing to perform services demonstrating the member's abandonment of the causes in which he was retained shall result in disbarment.

Standard 2.10: Culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a willful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

#### Case Law:

In *Hawes v. State Bar* (1990) 51 Cal.3d 587, the attorney's actions disclosed a pattern of willful failure to perform services and to communicate with clients in six matters, failure to return unearned fees, and failure to cooperate with the State Bar. The Supreme Court ordered that the Review Department's recommendation of three years actual suspension be reduced to one year, agreeing with the attorney's contention that the recommended discipline was excessive because his misconduct resulted significantly

from a mental disturbance, bipolar affective disorder, that was now controlled by medication, and also from related alcoholism and drug abuse that the attorney has overcome.

In *Pineda v. State Bar* (1989) 49 Cal.3d 753, the attorney repeatedly accepted fees from clients in seven matters, then abandoned them and kept the fees. The Supreme Court increased a stipulated discipline of one year actual to two years actual suspension, finding that one year actual suspension did not adequately reflect the attorney's willful disregard of his clients' interests and his multiple acts of wrongdoing. However, disbarment was not called for, in light of the attorney's cooperation with the State Bar throughout the disciplinary proceedings, his demonstrated remorse and determination to rehabilitate himself, and his concurrent family problems.

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was March 8, 2011.

**COSTS OF DISCIPLINARY PROCEEDINGS.**


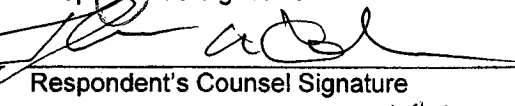
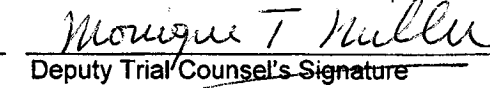
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of March 8, 2011, the prosecution costs in this matter are **\$22,615.32**. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: GARY D. OLIVE	Case number(s): 07-O-11228; 07-O-13029; 07-O-13798; 07-O-14124; 09-O-13834; 09-O-17409; 09-O-17785; 09-O-18921; 09-O-19174; 10-O-00081; 10-O-00088; 10-O-00336; 10-O-00927; 10-O-02451; 10-O-04053; 10-O-04078; 10-O-04083; 10-O-04092; 10-O-04405; 10-O-04832; 10-O-04838; 10-O-04840; 10-O-05609; 10-O-05611; 10-O-08697
------------------------------------	---

**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.

Date <u>3/13/11</u>	 Respondent's Signature	<u>GARY D. OLIVE</u> Print Name
Date <u>3/15/11</u>	 Respondent's Counsel Signature	<u>THEODORE A. COHEN</u> Print Name
Date <u>March 15, 11</u>	 Deputy Trial/Counsel's Signature	<u>MONIQUE T. MILLER</u> Print Name

(Do not write above this line.)

In the Matter of: GARY D. OLIVE	Case Number(s): 07-O-11228; 07-O-13029; 07-O-13798; 07-O-14124; 09-O-13834; 09-O-17409; 09-O-17785; 09-O-18921; 09-O-19174; 10-O-00081; 10-O-00088; 10-O-00336; 10-O-00927; 10-O-02451; 10-O-04053; 10-O-04078; 10-O-04083; 10-O-04092; 10-O-04405; 10-O-04832; 10-O-04838; 10-O-04840; 10-O-05609; 10-O-05611; 10-O-08697
------------------------------------	---

### 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.

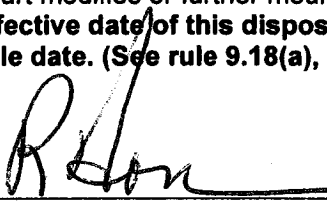
1. At page 9, the 4<sup>th</sup> complaining witness, Martha Sanchez, is deleted from the list of people entitled to restitution.
2. At page 4, D. (3)(a) i., the box for 1.4(c)(ii) must be checked.
3. At page 5, (1) delete the box requiring a conditional 1.4(c)(ii) showing.

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

Date

4/12/11

Judge of the State Bar Court

  
RICHARD A. HONN

**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 12, 2011, 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:

THEODORE A COHEN  
LAW OFFICES OF THEODORE A COHEN  
4601 ADMIRALTY WAY  
MARINA DEL REY, CA 90292

- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- by overnight mail at , California, addressed as follows:


- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Monique T. Miller, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 12, 2011.

  
\_\_\_\_\_  
Cristina Potter  
Case Administrator  
State Bar Court