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

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<p>Counsel For The State Bar</p> <p>Suzan J. Anderson Supervising Trial Counsel 1149 S. Hill Street Los Angeles, California 90015 (213) 765-1209</p> <p>Bar # 160559</p>	<p>Case Number (s) 09-O-11371, et al.</p> <p>[Inv. Matters]</p> <p>(Please see attachment, page 11 for full list of cases)</p>	<p>(for Court's use)</p> <p align="center"><b>PUBLIC MATTER</b></p> <p align="center"><b>FILED</b></p> <p align="center">SEP 09 2010</p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Paul J. Virgo P.O. Box 67682 Los Angeles, CA 90067 (310) 642-6900</p> <p>Bar # 67900</p>	<p>Submitted to: <b>Assigned 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: Adrian Matthew Pomery</p> <p>Bar # 249664</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 5, 2007.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 17 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 284, Rules of Procedure.
  - ☐ costs to be paid in equal amounts prior to February 1 for the following membership years:  
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - ☐ costs 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. Please see attachment
- (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**

Please see Attachment, page 14.

## D. Discipline:

### (1) \* ☒ Stayed Suspension:

- (a) ☒ Respondent must be suspended from the practice of law for a period of four 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 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 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 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:
- |   |  |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input checked="" type="checkbox"/> Financial Conditions             |

#### F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), 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:**

**COOPERATION AGREEMENT:**

Respondent must cooperate fully with the State Bar in any investigation or prosecution it may pursue regarding any attorney involved in any manner with US Foreclosure Relief Corp. and HE Servicing, Inc. In cooperating with the State Bar in any such investigation or prosecution, Respondent agrees to testify truthfully if requested at any related deposition or trial.

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Attachment language begins here (if any):  
Please see Attachment, pages 11 to 16.

In the Matter of  
Adrian Matthew Pomery, #249664

Case number(s):  
09-O-11371, et al.

A Member of the State Bar

## 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

- ☐ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

### b. Installment Restitution Payments

- ☐ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

### 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.

**RESPONDENT MUST PAY RESTITUTION AS OUTLINED IN THE ATTACHMENT AT  
PAGE 15.**

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### Law Office Management Conditions

- a. ☒ Within        days/6 months/        years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. ☒ Within        days/6 months/        years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 6 hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. ☐ Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for        year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

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

IN THE MATTER OF:                      ADRIAN MATTHEW POMERY

This Stipulation includes the following case numbers:

CASE NUMBERS:    09-O-11371, 09-O-11979, 09-O-12435, 09-O-12438, 09-O-12725,  
                         09-O-13853, 09-O-14050, 09-O-14052, 09-O-14536, 09-O-14556,  
                         09-O-14605, 09-O-14687, 09-O-14690, 09-O-14695, 09-O-14810,  
                         09-O-14815, 09-O-14816, 09-O-14817, 09-O-15066, 09-O-15069,  
                         09-O-15325, 09-O-15458, 09-O-15459, 09-O-15526, 09-O-15613,  
                         09-O-15897, 09-O-15993, 09-O-16087, 09-O-16385, 09-O-17418,  
                         09-O-18333, 09-O-18779, 09-O-19371, 10-O-01034, 10-O-04449,  
                         10-O-04531, 10-O-05306, 10-O-05965

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

**STATEMENT OF FACTS**

1. In November 2008, Respondent became associated with a loan modification company entitled H.E. Servicing, Inc ("HE Servicing"). HE Servicing has originally been entitled US Foreclosure Relief Corp. until that company was issued a Cease and Desist Order from the California Department of Real Estate. At all times herein, Respondent also operated his own law office, Pomery and Associates, which was associated with H.E. Service Company. Both US Foreclosure Relief Corp. and H.E. Service Company were owned and operated by non-attorneys.

2. HE Servicing advertised on the radio and television throughout various markets in the United States, and advertised on the internet.

3. Respondent was employed by the following clients to represent them in order to negotiate with their home mortgage lender and obtain a modification of their home mortgage loans<sup>1</sup>:

Case Number	Client	Date Client employed Respondent	Advanced fees client paid to Respondent	Client's State of Residence and Location of Property
09-O-11371	Alfonsia Pearson	12/25/08	\$ 500	South Carolina
09-O-11979	Darlene Snellings	11/12/08	2,350	California

<sup>1</sup> The clients in case numbers 09-O-14695 and 09-O-18779 originally employed U.S. Foreclosure Relief Corp. When that company became HE Servicing, these clients were then represented by Respondent.

09-O-12435	Amos Rogers, Jr.	12/9/08	1,000	Pennsylvania
09-O-12438	Harold Douglas	1/09	1,850	Texas
09-O-12725	Debra & Lester Fiskewold	3/6/09	1,500	Minnesota
09-O-13853	Debra Gamble	3/12/09	750	Alabama
09-O-14050	Larry Nelson	3/10/09	2,500	Illinois
09-O-14052	David Reece	1/13/09	500	Arizona
09-O-14536	Lena & Alan Odkins	4/10/09	2,500	Texas
09-O-14556	Peter Strange	6/08	2,350	Florida
09-O-14605	Susan Carpenter	11/26/08	2,836	Florida
09-O-14687	Gayle Schermond	12/16/08	3,000	New Jersey
09-O-14690	Rocshelle Ayres	12/19/08	3,750	Georgia
09-O-14695	John & Denise Medlock	10/10/08	1,700	California
09-O-14810	Dana Perno	4/9/09	5,000	Arizona
09-O-14815	Steven Williams	4/14/09	2,500	Ohio
09-O-14816	Angela Foreman	1/28/09	2,500	Arizona
09-O-14817	Rita Baker	2/09	2,500	Tennessee
09-O-15066	Stephen & Kay Edsall	2/26/09	2,500	Minnesota
09-O-15069	Carie Audas	2/09	3,750	Colorado
09-O-15325	Larry Poplawski	2/20/09	3,000	Michigan
09-O-15458	Bobby Boaz	3/6/09	2,500	Arizona
09-O-15459	Bernice Austin	1/16/09	2,500	New York
09-O-15526	Darrell Clayborne	11/08	2,500	Georgia
09-O-15613	Lance Green	4/8/09	2,500	Massachusetts
09-O-15897	Travis & Chasity Welker	3/16/09	2,500	Alabama
09-O-15993	Matthew Murphy	3/20/09	2,500	Michigan
09-O-16087	Manuel Fain	2/25/09	2,500	South Carolina
09-O-16385	Marie Depestre	1/09	2,500	Pennsylvania
09-O-17418	Rodney & Ana Sala	3/8/09	1,250	California
09-O-18333	Redmont Smith	12/31/08	7,500	Maryland
09-O-18779	James Washington	7/29/08	2,350	California
09-O-19371	Scott & Amy Hansen	5/20/09	2,500	Utah
10-O-01034	Ronald Garner	3/23/09	3,750	California
10-O-04449	Gail & Bonnie Coy	4/09	2,500	New Mexico
10-O-04531	Marvin Guterrez	3/5/09	2,500	New Mexico
10-O-05306	Dean and Mozella McCorty	4/09	2,000	Texas
10-O-05965	Kenneth Knott	4/19/09	2,500	Illinois

4. Each of those clients listed above who resided outside the state of California entered into a contract for legal services with Respondent whereby Respondent agreed to modify their home mortgage loans on properties in the states where they resided. Respondent is not presently, and has never been, licensed to practice law in any state other than California. Respondent knew that the clients and their properties were located in jurisdictions in which he was not entitled to practice law.

5. Numerous clients were told by Respondent or Respondent's representatives at HE Servicing and Pomery and Associates that Respondent would refund their advance legal fees if Respondent did not obtain a loan modification for the clients. This provision was also in most of the retainer agreements signed by the above clients.

6. Respondent failed to obtain loan modifications for the clients listed above, and failed to perform any other legal services of any value to the clients listed above in connection with negotiating or obtaining home mortgage loan modifications. Thus, Respondent did not earn the advanced fees collected from the clients.

7. To date, Respondent has not provided any refunds to the clients listed above.

8. On July 7, 2009, the Federal Trade Commission took control of the business pursuant to a Temporary Restraining Order ("TRO"), issued in *Federal Trade Commission, the People of the State of California, and the State of Missouri v. US Foreclosure Relief Corp., H.E. Servicing, Inc., George Escalante, Cesar Lopez, and Adrian Pomery*; case number SACV-09-768JVS (MLGX).

#### CONCLUSIONS OF LAW

The parties hereby stipulate and Respondent specifically admits that by his conduct described above, Respondent engaged in acts of serious misconduct warranting the discipline described herein as follows:

1. By failing to obtain loan modifications or perform any other legal services of value in the representation of the above-listed clients in California, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

2. By failing to obtain loan modifications for the above-listed clients in California, failing to perform any other legal services of value for those clients in connection with negotiating and obtaining a home mortgage loan modification, and conducting himself in a manner which allowed the Federal Trade Commission to obtain a TRO and take control of the business, Respondent effectively withdrew from representation of his clients, and failed, upon termination of employment to take reasonable steps to avoid reasonably foreseeable prejudice to his clients, hereby improperly withdrawing from representation and abandoning the above-listed clients in California in willful violation of rule 3-700(A)(2) of the Rules of Professional Conduct.

3. By failing to refund promptly any part of the advanced fees paid to Respondent each of the clients listed above, despite not having earned that fee, Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct.

4. By entering into contracts for legal services with clients in states in which Respondent was not entitled to practice, to obtain modifications of home mortgage loans on properties located in those states, Respondent practiced law in jurisdictions where to do so would be a violation of the regulations of the profession in those jurisdictions, in willful violation of rule 1-300(B) of the Rules of Professional Conduct.

5. By entering into agreements for, charging, and collecting legal fees for services from the clients listed above in states other than California, where Respondent is not entitled to practice law, Respondent willfully entered into agreements for, and charged and collected, illegal fees in willful violation of rule 4-200(A) of the Rules of Professional Conduct.

### **FACTORS IN MITIGATION**

Respondent cooperated fully with the FTC in the prosecution of their matter and in March 2010 entered into a Stipulated final Judgment for Permanent Injunction and Settlement of Claims.

Respondent also displayed candor and cooperation with the State Bar throughout these investigations and by entering into this Stipulation including the cooperation agreement.

If Respondent were to testify he would state:

In April 2010, after he became aware that the State Bar and other agencies were suspect of the loan modification businesses, Respondent made the decision to take on no more clients. At the same time, he had to ensure the existing clients received competent and diligent representation. As a result, he did not fold his business and abandon those clients. This decision to remain in operation created a financial hardship on Respondent. As of May 2009, Respondent had no income stream.

After the decision to take no new clients, Respondent advised those in charge of HE Servicing that the company should look for another attorney to work with, but should wind up operations after the clients were serviced.

Respondent routinely turned potential clients away whom he knew would not or could not benefit from his services. Some of those turned away actually had equity in their property and Respondent advised them that to sell their property as a better solution to their situation.

### **FACTORS IN AGGRAVATION**

Respondent's clients were seriously harmed by the above described misconduct. Most, if not all, of the clients who hired Respondent to assist them with their home loan modification did so because they were financially distressed. Thus, the loss of the use of the money they paid to Respondent for services that were not performed, caused significant harm to Respondent's clients.

### **DISCUSSION RE STIPULATED DISCIPLINE**

Standard 1.3 of the *Standards For Attorney Sanctions For Professional Misconduct* provides that the primary purpose of discipline is the protection of the public, the courts and legal profession; maintenance of high professional standards; and the preservation of public confidence in the legal profession.

Standard 2.4 states that reproof or suspension is the appropriate discipline, with due regard to the extent of the misconduct and the degree of harm to the client, for violations of rule 3-110(A) of the Rules of Professional Conduct.

Standard 2.7 states that a violation of rule 4-200 of the Rules of Professional Conduct shall result in at least a six-month actual suspension, irrespective of mitigating circumstances.

The parties submit that the stipulated discipline in this matter complies with the Standards both specifically and with regard to the general purposes and goals of the disciplinary process.

Respondent's misconduct is aggravated by the fact that it harmed his clients and deprived them of funds they could have used for their mortgages for a substantial period of time. However, Respondent cooperated with the FTC, entered into a stipulated judgment with that office and agreed to pay . . . .

Given the aggravating and mitigating circumstances present in this case, a three year suspension, along with the probationary conditions set forth herein, is consistent with the Standards.

Finally, the parties submit that given Respondent's recognition of wrongdoing, along with his conduct in attempting to rectify the harm he caused, the stipulated discipline and probationary conditions in this matter are sufficient to assure that Respondent will conform his future conduct to ethical standards and, therefore, protect the public, courts, and profession. This is consistent with Standard 1.3.

## **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(6), was August 16, 2010.

## **ESTIMATE OF COSTS OF DISCIPLINARY PROCEEDINGS**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of May 13, 2010, the estimated prosecution costs in this matter are approximately \$2,602.00. Respondent acknowledges that this figure is an estimate only. 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 costs of further proceedings.

## **FINANCIAL CONDITIONS, RESTITUTION**

Pursuant to the Stipulated Judgment with the FTC, Respondent's clients are able to make a claim for attorney fees through July 2010. Those claims that can be paid out of the funds seized by the FTC pursuant to the TRO, will be paid in September 2010. The Receiver for the FTC predicts that a very small percentage, 20 to 30% will be available for each client. The Receiver will provide the State Bar with a comprehensive list detailing the payment made to each client.

Respondent must pay restitution (including the principal amount less any payment received from the FTC, plus interest of 10% per annum from the date each of the above-listed clients employed

Respondent. Respondent must pay the above-referenced restitution and provide satisfactory proof of payment to the Office of Probation prior to the termination of his four year stayed suspension.

Respondent waives any objection to payment by the State Bar Client Security fund upon a claim by any of his clients to unearned attorney fees less any amounts they receive from the FTC.

#### **STATE BAR ETHICS AND CLIENT TRUST ACCOUNT SCHOOL**

Because Respondent has agreed to attend State Bar Ethics School and State Bar Client Trust Account School as part of this stipulation, Respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School and State Bar Client Trust Account School.



(Do not write above this line.)

In the Matter of  
ADRIAN MATTHEW POMERY

Case number(s):  
09-0-11371, et al.

### 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 Fact, Conclusions of Law and Disposition.

8/19/10

Date

8/23/10

Date

8/23/10

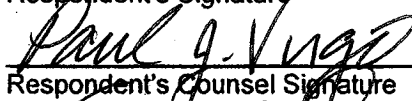
Date



Respondent's Signature

ADRIAN MATTHEW POMERY

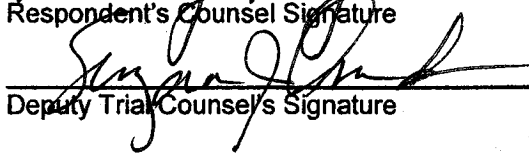
Print Name



Respondent's Counsel Signature

PAUL J. VIRGO

Print Name



Deputy Trial Counsel's Signature

SUZAN J. ANDERSON

Print Name

(Do not write above this line.)

In the Matter Of  
Adrian Matthew Pomery, #249664

Case Number(s):  
09-O-11371, et al.

### 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.

For the eight clients (Douglas, strange, Baker, Audas, Clayborne, Depestre, Coy, and McCorty) for whom a month, but not specific day, was given for the date of employment of Respondent (see p.12), the calculation of interest for purposes of restitution will be made using the 1st day of the month of employment.

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 135(b), 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.)

9/9/10  
Date

  
Judge of the State Bar Court

**DONALD F. MILES**

## CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; 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 September 9, 2010, 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:

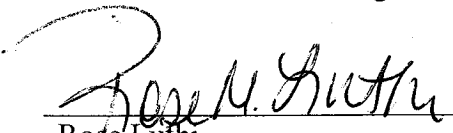
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

PAUL JEAN VIRGO, ESQ.  
PO BOX 67682  
LOS ANGELES, CA 90067 - 0682

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

SUZAN ANDERSON, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 9, 2010.

  
\_\_\_\_\_  
Rose Luthi  
Case Administrator  
State Bar Court