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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>STAYED SUSPENSION</b>		
Counsel For The State Bar  Hugh G. Radigan Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015 213-765-1206  Bar # 94251	Case Number(s): 09-O-15770 10-O-03743 (inv)	For Court use only  <div style="text-align: center;"> <b>FILED</b>  <b>MAR 24 2011</b> <i>hrc</i>            STATE BAR COURT            CLERK'S OFFICE            LOS ANGELES         </div> <div style="text-align: center; font-size: 1.5em; font-weight: bold; margin-top: 20px;">           PUBLIC MATTER         </div>
In Pro Per Respondent  Henry R. Gaxiola 10700 Civic Center Drive, Suite 100C Rancho Cucamonga, California 91730 909-941-2000  Bar # 138498	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Henry R. Gaxiola  Bar # 138498  A Member of the State Bar of California (Respondent)		

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

#### A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 7, 1988.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 13 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Effective January 1, 2011)



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - Costs are added to membership fee for calendar year following effective date of discipline.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: 2012 and 2013. (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 04-O-14951
  - (b)  Date prior discipline effective June 30, 2006
  - (c)  Rules of Professional Conduct/ State Bar Act violations: rule 3-110(A)
  - (d)  Degree of prior discipline private reproof
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (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. Respondent's failure to perform within the subject foreclosure related action resulted in the client losing the home to foreclosure.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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. Respondent cooperated with the State Bar during the pendency of this matter.
- (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.

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(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**

## D. Discipline:

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of one year.

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:

The above-referenced suspension is stayed.

(2)  **Probation:**

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

## E. Additional Conditions of Probation:

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

(2)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(3)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

(4)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

(5)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

- (6)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
  - No Ethics School recommended. Reason: .
- (8)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9)  The following conditions are attached hereto and incorporated:
  - 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 within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
  - No MPRE recommended. Reason:
- (2)  **Other Conditions:**

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Attachment language (if any):

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

IN THE MATTER OF:        Henry R. Gaxiola

CASE NUMBER(S): ET AL.        09-O-15770 and 10-O-03743(inv)

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.

**FACTS AND CONCLUSIONS OF LAW.**

**Case No. 09-O-15770**

1. On March 24, 2009, Marilu Murphy ("Murphy") employed Respondent to represent her in connection with a dispute between Murphy and her lender, Dove Capital Corp. ("Dove"). Murphy paid Respondent \$5000 in attorney's fees for the representation.
2. By the time Murphy employed Respondent, she had already filed her complaint against Dove *in pro per* in the Superior Court of California. On October 23, 2008, her case, *Murphy v. Dove Capital Corp. et al*, Case# 2:08-cv-07070-AHM-MAN, was removed to the Central District of California.
3. On January 26, 2009, one of the defendants in the matter, Chase Home Finance, LLC ("Chase"), filed a Motion to Dismiss Murphy's complaint.
4. On March 23, 2009, Murphy filed a Declaration in response to Chase's Motion to Dismiss.
5. On March 30, 2009, Chase filed a Response in support of its Motion to Dismiss.
6. On April 6, 2009, Respondent substituted into the case in place of Murphy. On the same date, Respondent appeared on Murphy's behalf at a hearing where the Court granted Chase's Motion to Dismiss with leave for Plaintiff to file a first amended complaint by April 27, 2009.
7. Respondent did not file a first amended complaint on Murphy's behalf. Respondent did not advise Murphy as to the status of her matter.
8. On May 11, 2009, the Court dismissed Murphy's case with prejudice due to Respondent's failure to file a first amended complaint. Respondent did not advise Murphy of the dismissal.
9. Between approximately May 1, 2009 and May 24, 2009, Murphy repeatedly contacted Respondent by telephone to find out the status of her case. She left numerous messages on Respondent's voicemail and with his receptionist. She reached Respondent on approximately three occasions and Respondent told her he would return her call. Respondent did not return any of Murphy's calls. Respondent did not advise Murphy that her matter had been dismissed.
10. On July 31, 2009, Murphy sent Respondent a letter requesting that he return the documents related to her case and provide her with a refund of the \$5000 fee she paid Respondent in attorney's fees.
11. On September 2, 2009, Murphy sent Respondent another letter requesting that he return the documents related to her case and provide her with a refund of the \$5000 fee she paid Respondent in attorney's fees.

12. On July 1, 2010, Murphy sent Respondent a letter terminating Respondent as her attorney, requesting that he return all documents related to her case and provide her with a refund of the \$5000 she paid Respondent in attorney's fees.

13. Respondent failed to respond to the aforementioned letters sent by Murphy, send Murphy the documents related to her case or provide her with a refund until November 1, 2010, after the commencement of this matter.

14. Respondent did not perform services of value to Murphy in connection with her claim.

15. On October 15, 2009, a State Bar Investigator sent Respondent a letter to his State Bar Membership Record address requesting his response to the allegations in the complaint received from Murphy. This letter was not returned as undeliverable by the United States Postal Service. Respondent received this letter. Respondent did not provide a response to the letter.

16. On November 18, 2009, the State Bar Investigator sent another letter to the Respondent requesting his response to the allegations in the complaint received from Murphy. The letter was not returned to the State Bar by the United States Postal Service. Respondent received this letter. Respondent did not provide a response to the letter.

#### Conclusions of Law

1. By failing to file a first amended complaint claim on Murphy's behalf, Respondent willfully 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 respond to Murphy's status inquiries or advise Murphy that her matter had been dismissed, Respondent willfully failed to respond promptly to status inquiries of a client and keep client informed of significant developments in the matter in willful violation of section 6068(m) of the Business and Professions Code.
3. By failing to provide Murphy with her client file, Respondent failed to release all client papers and property promptly, at the client's request, upon termination of employment in willful violation of rule 3-700(D)(1) of the Rules of professional Conduct.
4. By not promptly refunding the advanced fees paid by Murphy, Respondent failed to refund unearned monies in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

5. By not providing a response to the State Bar Investigator regarding the allegations raised by Murphy, Respondent willfully failed to cooperate and participate in a disciplinary investigation pending against Respondent in willful violation of section 6068(i) of the Business and Professions Code.

**Case No. 10-O-03743**

Facts:

1. On April 14, 2009, Maria Atunes entered into an attorney/client retainer agreement with Respondent for the express purpose of having Respondent compile and present a loan modification package to Atunes' lender. The retainer agreement provided for a flat fee of \$4,750.00, which was paid in two installments, \$2,000.00 on April 14, 2009, and \$2,750.000 on August 15, 2009. Cesar R. Lozano paid the subject retainer flat fee of \$4,750.00 on behalf of Maria Atunes.
2. On June 16, 2009, Respondent contacted Atunes' lender, Select Portfolio Servicing, Inc., and submitted to them a written authorization together with a loan modification package consisting of financial records. Thereafter, Respondent provided no legal services as it relates to Atunes' loan with Select Portfolio Servicing, Inc., resulting in the subject property being lost to foreclosure.

Conclusion of Law:

1. The foregoing conduct of not performing any legal services of value to Atunes, including, but not limited to, negotiating and obtaining a home mortgage loan modification, supports the legal conclusion that Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in violation of Rules of Professional Conduct, rule 3-110(A).

**PENDING PROCEEDINGS.**

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

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of January 7, 2011, the prosecution costs in this matter are approximately \$3654.00. 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.

## AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.6(a) provides that, "The appropriate sanction for an act of professional misconduct shall be that set forth in the following standards for the particular act of misconduct found or acknowledged. If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions."

Standard 1.6(b)(i) provides for a greater degree of discipline than the appropriate sanction where aggravating circumstances are found to surround the complained of misconduct. In the case at bar there exists no mitigation of consequence existent at the operative period of Respondent's misconduct in Murphy's matter. Respondent's itemized mitigation in the form of health concerns and family emergencies and crisis associated with a vehicular accident and its sequellae, all post date the motion to dismiss order and amended complaint obligation which Respondent failed to perform. The loss of Murphy's home constitutes aggravation.

Standard 1.7(a) provides that the degree of discipline to be imposed herein shall be greater than that imposed on the member within his prior discipline unless the prior was remote in time and the offense minimal in severity.

Standard 2.6 provides for disbarment or suspension depending upon the gravity of the offense or harm where culpability for violation of sections 6068(m) or 6068(i) is found.

Standard 2.4(a) provides for disbarment for culpability for a pattern of willfully failing to perform services demonstrating abandonment.

Standard 2.4(b) provides for reproof or suspension for culpability for a failure to perform services that does not constitute a pattern of misconduct or culpability of a member for willful failure to communicate with a client.

Standard 2.10 provides for reproof or suspension for culpability for a violation of the Rules of Professional Conduct not otherwise specified.

In imposing discipline, the court should consider the appropriate discipline in light of the standards, but in so doing the court may consider any ground that may form a basis for an exception to application of the standards. *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980. Inasmuch as the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. *Bates v. State Bar* (1990) 51 Cal. 3<sup>rd</sup> 1056, 1061.

The disposition herein allows for a deviation from the strict application of the standards since a suspension with actual time would constitute too harsh a result and would be punitive in nature. Respondent's misconduct in these two loan modification related matters, warrants the discipline herein of a one year suspension stayed and a two year probation. The discipline is both warranted and adequately serves to protect the public, courts and legal profession.

## **AGGRAVATING CIRCUMSTANCES.**

### **PRIOR DISCIPLINE.**

In Case No. 04-O-14951, Respondent received a private reproof filed June 9, 2006, arising out of a failure to perform within a Lemon Law claim. The effective date of the stipulation was June 30, 2006.

### **Additional Aggravating Circumstances**

The loss of Murphy's home as a result of Respondent's failure to perform constitutes an aggravating factor.

## **MITIGATING CIRCUMSTANCES.**

### **FACTS SUPPORTING MITIGATING CIRCUMSTANCES.**

Respondent displayed spontaneous candor and cooperation to the State Bar during the pendency of this matter.

## **STATE BAR ETHICS SCHOOL.**

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

## **FINANCIAL CONDITIONS, RESTITUTION.**

Within one year from the effective date of discipline in this matter, respondent must make restitution to Cesar R. Lozano or the Client Security Fund if it has paid, in the principal amount of \$ 4,750.00 plus interest at the rate of 10% per annum from April 14, 2009 and furnish satisfactory evidence of restitution to the Office of Probation. Respondent shall include, in each quarterly report required herein, satisfactory evidence of all restitution payments made by him or her during that reporting period.



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In the Matter of: HENRY R. GAXIOLA	Case Number(s): 09-O-15770; 10-O-03743 (inv)
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### STAYED SUSPENSION ORDER

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

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

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.)**

03-24-11

Date



Judge of the State Bar Court

**RICHARD A. PLATEL**

**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 March 24, 2011, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION**

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:

**HENRY R. GAXIOLA  
8556 NUEVO AVE  
FONTANA, CA 92335**

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

**HUGH RADIGAN, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 24, 2011.



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Tammy Cleaver  
Case Administrator  
State Bar Court