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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
<p>Counsel For The State Bar</p> <p>Katherine Kinsey State Bar of California 1149 S. Hill Street Los Angeles, CA 90015 213-765-1503</p> <p>Bar # 183740</p>	<p>Case Number(s):</p> <p>10-O-00016 10-O-05434 10-O-02310 10-O-04976 10-O-06282 10-O-06415 10-O-07960 10-O-11345 11-O-10559 11-O-11526 11-O-13344</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 24pt; font-weight: bold;">PUBLIC MATTER</p> <p style="text-align: center; font-size: 24pt; font-weight: bold;">FILED</p> <p style="text-align: center; font-size: 18pt;">DEC 14 2011</p> <p style="text-align: center; font-size: 10pt;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Michael G. Gerner 425 S. Beverly Dr. Ste 210 Beverly Hills, CA 90212 310-556-1300</p> <p>Bar # 65906</p>	<p>Submitted to: <b>Assigned Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: Ken Nathanson</p> <p>Bar # 77556</p> <p>A Member of the State Bar of California (Respondent)</p>	<p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted December 21, 1977.
- (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 20 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)

Actual Suspension



- (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: 2014, 2015. (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. By repeatedly failing to account to his clients and by repeatedly failing to refund unearned fees, Respondent harmed his clients.
- (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. Respondent has admitted culpability at this early stage, has agreed to refund unearned fees and has agreed to arbitrate fee disputes.
- (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:**

Respondent was admitted to the practice of law on December 21, 1977 and has no prior record of discipline.

Respondent submitted letters from a number of attorneys who attested to Respondent's good reputation within the legal community and their high regard for him. They described Respondent as hard working and stated that they would not hesitate to hire him for legal matters.

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law 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:
- (b)  The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent must be placed on probation for a period of Two (2) 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 Six (6)-months.
- 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:

(Effective January 1, 2011)

Actual Suspension

### 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:** See additional conditions attached to pages 18 and 19.

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In the Matter of: Ken Nathanson	Case Number(s): 10-O-00016, 10-O-05434, 10-O-02310, 10-O-04976, 10-O-06282, 10-O-06415, 10-O-07960, 10-O-11345, 11-O-10559, 11-O-11526, 11-O-13344
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## Financial Conditions

### a. Restitution

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

Payee	Principal Amount	Interest Accrues From
Michael and Michele Lloyd	\$2,545	March 25, 2010
Derek and Paula Miller	\$5,390	December 15, 2009
Jackie Parkourana	\$2,500	January 5, 2010
Andree Neumeister	\$3,740	October 7, 2009

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than within one (1) year of 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";





8. On November 9, 2009, Respondent emailed Lynn and told her that REWIRE no longer existed and did not perform the work they were paid to perform.

9. On November 17, 2009, Lynn emailed Respondent requesting a refund of the attorney's fees paid to Respondent. Respondent received the email but did not provide a refund or an accounting.

10. On December 18, 2009, Respondent emailed Lynn stating that REWIRE had scammed them both and that Respondent took over processing the Houston file in October. In the email, Respondent asked Lynn to sign a third party authorization so he could negotiate with her lender.

11. On December 19, 2009, Lynn responded to Respondent's email saying that they had lost the trust and faith in Respondent and could not sign the authorization form.

12. On January 15, 2010, Lynn emailed Respondent, once again, requesting a refund. On January 15, 2010, Respondent responded to Lynn's email stating that there was no money available for refunds.

#### CONCLUSIONS OF LAW:

By sharing a portion of the \$3,975 in attorney's fees paid by the Houstons with REWIRE, Respondent shared legal fees with a person who is not a lawyer, Respondent willfully violated Rules of Professional Conduct, rule 1-320(A).

By failing to provide an accounting of the \$3,975 in advanced attorney's fees to the Houstons, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

#### Case No. 10-O-05434 (Complainants: Michele and Michael Lloyd)

#### FACTS:

1. On April 22, 2009, Michael and Michele Lloyd (the "Lloyds") employed Respondent to obtain a loan modification on their behalf. Pursuant to the retainer agreement, Respondent would consult with REWIREMYLOAN ("REWIRE") to assist his firm in negotiating with the Lloyds' lender.

2. On April 24, 2009, Michael Lloyd paid Respondent \$3,295 in advanced legal fees for the loan modification matter. According to Respondent and pursuant to the REWIRE invoice, \$2,470 of the \$3,295 was paid to REWIRE to process the loan modification on the Lloyds' behalf.

3. During the period in question, REWIRE was an entity owned and controlled by Adeel Amin, a non-attorney.

4. On May 7, 2009, Respondent's office sent a third-party authorization form to IndyMac, the Lloyds' lender. In or about May 2009, Respondent's office sent a Qualified Written Request letter to IndyMac seeking loan documentation.

5. In or about September 2009 or in or about October 2009, REWIRE ceased operating without submitting a loan modification package to IndyMac on behalf of the Lloyds.

6. In November 2009, Respondent submitted a loan mitigation package to IndyMac on the Lloyds' behalf.

7. Pursuant to Respondent's retainer agreement with the Lloyds, Respondent's fees would not be earned until his office had negotiated and received a loan modification offer from Lloyds' lender. If Respondent was unable to obtain a favorable modification for the Lloyds, the entire fee would be refundable less a \$750 fee for Respondent's time and efforts.

8. On March 17, 2010, IndyMac informed Respondent's office that the Lloyds' loan modification request had been denied.

9. On March 24, 2010, Respondent's office emailed Michael Lloyd informing him that IndyMac had denied the loan modification.

10. On March 25, 2010, Michael Lloyd responded to the email requesting a refund pursuant to the retainer agreement.

11. On March 25, 2010, Chris Clark ("Clark") from Respondent's law office emailed Michael Lloyd informing that the firm was not in a position at the time to provide a refund. Clark told Lloyd that if he wanted a refund, he needed to put the request in writing and mail it to Respondent.

12. On March 30, 2010, Lloyd wrote Respondent a letter requesting a refund and mailed it to Respondent. Respondent received the letter but has not refunded any of the fees to the Lloyds.

13. Pursuant to the retainer agreement, Respondent owes the Lloyds a refund of \$2,545.

#### CONCLUSIONS OF LAW:

By sharing a portion of the \$3,295 in attorney's fees paid by the Lloyds with REWIRE, Respondent shared legal fees with a person who is not a lawyer, Respondent willfully violated Rules of Professional Conduct, rule 1-320(A).

By failing to refund \$2,545 in unearned attorney's fees to the Lloyds, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2).

#### Case No. 10-O-02310 (Complainants: Steven and Lori Hoffelt)

#### FACTS:

1. In June 2009, Terry Baner ("Baner") referred Steven and Lori Hoffelt ("Hoffelts") to Respondent for loan modification services.

2. On June 15, 2009, the Hoffelts hired Respondent to obtain a loan modification on their behalf.

Pursuant to the retainer agreement, Respondent would utilize REWIREMYLOAN ("REWIRE") to assist his firm in negotiating a loan modification with the Hoffelts' lender.

3. On June 18, 2009, the Hoffelts paid Respondent \$3,995 in advanced legal fees for the loan modification matter. According to Respondent, \$3,022.52 of that amount was paid to REWIRE to process the loan modification on the Hoffelts' behalf.

4. During the period in question, REWIRE was an entity owned and controlled by Adeel Amin, a non-attorney.

5. On August 18, 2009, a loan modification package was submitted to the Hoffelts' lender on their behalf requesting a loan modification under the federal government's Home Affordable Modification Program (HAMP). On or about September 11, 2009, the lender declined to modify the Hoffelts mortgage because their income made them ineligible for HAMP.

6. On September 17, 2009, Steve Hoffelt wrote Baner and REWIRE a letter stating that he hired an Respondent to do an audit as well represent him in dealings with the lender's legal team. In the letter, Hoffelt noted that he could have applied for the HAMP program himself.

7. On November 12, 2009, Respondent sent an email to Baner acknowledging that Mr. Hoffelt should not have been signed up for loan modification services.

8. On December 19, 2009, Steven Hoffelt wrote Respondent a letter expressing dissatisfaction with Respondent's legal services. In the letter, Hoffelt noted that pursuant to Respondent's retainer, Respondent would review all documents, contact and negotiate with the lender and Respondent had failed in that regard. In the December 19, 2009 letter, Hoffelt requested an accounting and refund of the fees paid. Respondent received the letter but did not provide an accounting or a refund.

9. By seeking a loan modification for the Hoffelts that he knew, or in the absence of gross negligence, should have known, the Hoffelts were not eligible for, Respondent provided no services of value to the Hoffelts.

#### CONCLUSIONS OF LAW:

By sharing a portion of the \$3,995 in attorney's fees paid by the Hoffelts with REWIRE, Respondent shared legal fees with a person who is not a lawyer, Respondent willfully violated Rules of Professional Conduct, rule 1-320(A).

By failing to provide an accounting of the \$3,995 in advanced attorney's fees to the Hoffelts, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

By failing to refund any of the \$3,995 in unearned attorney's fees to the Hoffelts, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 10-O-04976 (Complainant: Hector Jimenez)

FACTS:

1. On June 15, 2009, Hector Jimenez ("Jimenez") hired Respondent to obtain a loan modification on his behalf. Pursuant to the retainer agreement, Respondent would consult with REWIREMYLOAN ("REWIRE") to assist his firm in negotiating a loan modification with the Jimenez's lender.

2. On June 25, 2009, Jimenez paid Respondent \$3,995 in advanced legal fees for a loan modification. According to Respondent, \$3,720 of that amount was wired to REWIRE as payment to process the loan modification on Jimenez's behalf.

3. During the period in question, REWIRE was an entity owned and controlled by Adeel Amin, a non-attorney.

4. In October 2009, Respondent submitted a loan mitigation package to Jimenez's lender and in November 2009, Respondent provided additional information to the lender on Jimenez's behalf.

5. On May 13, 2010, Jimenez's lender approved a loan modification on his behalf. On May 26, 2010, Jimenez signed the modification agreement and returned it to his lender.

CONCLUSIONS OF LAW:

By sharing a portion of the \$3,995 in attorney's fees paid by Jimenez with REWIRE, Respondent shared legal fees with a person who is not a lawyer, Respondent willfully violated Rules of Professional Conduct, rule 1-320(A).

Case No. 10-O-06282 (Complainant: Ron Holmstrom)

FACTS:

1. On June 26, 2009, Ronald Holmstrom ("Holmstrom") hired Respondent to obtain a loan modification on his behalf. Pursuant to the retainer agreement, Respondent would utilize REWIREMYLOAN ("REWIRE") to assist his firm in negotiating a loan modification with Holmstrom's lender.

2. By July 31, 2009, Holmstrom had paid Respondent \$3,495 in advanced legal fees for a loan modification. According to Respondent, \$2,609.77 of that amount was paid to REWIRE as payment to process the loan modification on Holmstrom's behalf.

3. During the period in question, REWIRE was an entity owned and controlled by Adeel Amin, a non-attorney.

4. On October 5, 2009, Respondent's office submitted a loan modification package to Holmstrom's lender.

5. From October 2009 through February 2010, Respondent's office communicated with Holmstrom's lender, Chase Bank, regarding the loan modification for Holmstrom.

6. On February 26, 2010, Chris Clark informed Holmstrom that Chase had declined the modification because Holmstrom did not qualify for a loan modification under the HAMP program.

7. On March 1, 2010, Clark told Holmstrom that Respondent's firm could reapply for a loan modification once his financial circumstances changed. On March 1, 2010, Holmstrom requested a refund of the fees paid to Respondent

8. On March 3, 2010, Holmstrom sent an email to Respondent again requesting a full refund. Respondent received the email but did not provide a refund and did not account for the funds he received from Holmstrom.

#### CONCLUSIONS OF LAW:

By sharing a portion of the \$3,495 in attorney's fees paid by Holmstrom with REWIRE, Respondent shared legal fees with a person who is not a lawyer, Respondent willfully violated Rules of Professional Conduct, rule 1-320(A).

By failing to provide Holmstrom with an accounting of the \$3,495 in advanced attorney's fees, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

#### Case No. 10-O-06415 (Complainant: Monica Mena)

#### FACTS:

1. On June 6, 2009, Monica Mena ("Mena") hired Respondent to obtain a loan modification on her behalf and paid Respondent \$3,995 in advanced legal fees.

2. Pursuant to the retainer agreement, Respondent would consult with REWIREMYLOAN ("REWIRE") to assist his firm in negotiating a loan modification with Mena's lender. Respondent paid \$3,245 of the \$3,995 to REWIRE as payment to process a modification on Mena's behalf.

3. During the period in question, REWIRE was an entity owned and controlled by Adeel Amin, a non-attorney.

4. Respondent states that in September 2009, his office submitted a loan modification package to Bank of America on Mena's behalf. In October 2009 and in November 2009, Respondent's office provided Bank of America with additional information.

5. By February 2010, Mena had not received a loan modification and contacted the California Rural Legal Assistance ("CRLA") for assistance. On February 25, 2010, a CRLA attorney wrote Respondent on Mena's behalf stating that Mena had been promised a 30% principal reduction by radio personality, Robert Aldana and demanded a full refund of the \$3,995 on Mena's behalf. Respondent stated that he spoke to the CRLA attorney, told the attorney that Aldana was not authorized to speak on his behalf and maintained that the attorney's fees had been earned.

6. According to Respondent, in April 2010, Mena received a loan modification offer from Bank of America that included a \$755 reduction of her monthly payment. However, Respondent is unsure if Mena accepted the offer because it did not include the reduction of principal that she wanted.

#### CONCLUSIONS OF LAW:

By sharing a portion of the \$3,995 in attorney's fees paid by Mena with REWIRE, Respondent shared legal fees with a person who is not a lawyer, Respondent willfully violated Rules of Professional Conduct, rule 1-320(A).

By failing to provide Mena with an accounting of the \$3,995 in advanced attorney's fees, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

#### Case No. 10-O-07960 (Complainants: Andres and Hermina Huizar)

#### FACTS:

1. In June 2009, Roberto Aldana ("Aldana") referred Andres and Hermina Huizar ("Huizars") to Respondent for loan modification services.
2. On June 15, 2009, the Huizars hired Respondent to obtain a loan modification on their behalf. Pursuant to the retainer agreement, Respondent would consult with REWIREMYLOAN ("REWIRE") to assist his firm in negotiating a loan modification on the Huizars' behalf.
3. On June 18, 2009, the Huizars paid Respondent \$4,495 in advanced legal fees and \$3,545 of that amount was paid to REWIRE for processing the loan modification for the Huizars.
4. During the period in question, REWIRE was an entity owned and controlled by Adeel Amin, a non-attorney.
5. In September 2009, the Huizars provided Respondent's office with the documents for their loan modification.
6. On December 11, 2009, Respondent sent Huizar a letter in English and Spanish asking for additional documentation to process the file. The letter asked Huizar to respond within 14 days of receipt of the letter. Huizar did not provide the requested documentation.
7. On January 6, 2010, the Huizars wrote Respondent a letter stating they had not received the services they paid for. In the letter, the Huizars told Respondent that he had breached their contract, told him to cease working on their file and demanded a full refund within 10 days of the letter. Respondent received the letter. Although Respondent was terminated prior to completing the loan modification process, Respondent did not refund any fees to the Huizars and did not provide an accounting for the \$4,495 in fees paid by the Huizars.

CONCLUSIONS OF LAW:

By sharing a portion of the \$4,495 in attorney's fees paid by the Huizars with REWIRE, Respondent shared legal fees with a person who is not a lawyer, Respondent willfully violated Rules of Professional Conduct, rule 1-320(A).

By failing to provide an accounting of the \$4,495 in advanced attorney's fees paid by the Huizars, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

Case No. 10-O-11345 (Complainants: Tim and Teresa Aubry)

FACTS:

1. On October 11, 2009, Senate Bill 94, prohibiting the collection of advanced fees for mortgage loan modification services, became operative.
2. In November 19, 2009, Tim and Teresa Aubry (the "Aubrys") retained Respondent for loan modification services. In or about November 2009, the Aubrys paid Respondent \$2,500 in advanced legal fees for loan modification services.
3. Respondent collected advanced fees for mortgage loan modifications services for a client after October 11, 2009.
4. By September 2011, Respondent had refunded the \$2,500 to the Aubrys.

CONCLUSIONS OF LAW:

By collecting advanced fees for loan modifications after October 11, 2009, Respondent willfully violated Business and Professions Code section 6106.3.

Case No. 11-O-10559 (Complainants: Derek and Paula Miller)

FACTS:

1. On April 22, 2009, Derek and Paula Miller (the "Millers") employed Respondent to obtain a loan modification on their behalf. Pursuant to the retainer agreement, Respondent would utilize outside consultants REWIREMYLOAN ("REWIRE") to assist his firm in negotiating with the Millers' lender.
2. On August 4, 2009, the Millers paid Respondent \$6,990 in advanced legal fees for loan modifications on two properties. According to Respondent and pursuant to the REWIRE invoice, \$6,490 of the \$6,990 was paid to REWIRE to process the loan modification on the Millers' behalf.
3. During the period in question, REWIRE was an entity owned and controlled by Adeel Amin, a non-attorney.

4. According to Respondent, the Millers' loan modification package was forwarded to Bank of America sometime between August 24, 2009 and October 31, 2009.

5. On December 15, 2009, Respondent's office emailed Derek Miller requesting updated financial records to submit to Bank of America. On December 15, 2009, Derek Miller responded by email terminating Respondent's services and requesting a full refund.

6. Respondent estimates that three to five hours of legal services were performed on the Millers matter prior to the December 15, 2009 termination.

7. Although Respondent was terminated prior to completing the loan modification process, Respondent did not refund any fees to the Millers and did not provide an accounting for the \$6,990 in fees paid by the Millers.

8. Respondent agrees that he owes the Millers a refund of \$5,390.

#### CONCLUSIONS OF LAW:

By sharing a portion of the \$6,990 in attorney's fees paid by the Millers with REWIRE, Respondent shared legal fees with a person who is not a lawyer, Respondent willfully violated Rules of Professional Conduct, rule 1-320(A).

By failing to provide an accounting of the \$6,990 in advanced attorney's fees paid by the Millers, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

By failing to refund \$5,390 in unearned attorney's fees to the Millers, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2).

#### Case No. 11-O-11526 (Complainant: Jackie Parkourana)

#### FACTS:

1. On October 11, 2009, Senate Bill 94, prohibiting the collection of advanced fees for mortgage loan modification services, became operative.

2. In October 2009, Jackie Parkourana ("Parkourana") received a flyer from Respondent's office offering loan modification services.

3. On November 30, 2009, Parkourana employed Respondent to obtain a loan modification on her behalf.

4. On December 2, 2009, Parkourana paid Respondent \$1,250 in advanced legal fees for loan



modification services. On January 5, 2010, Parkourana paid an additional \$1,250 to Respondent for loan modification services. Thereafter, Parkourana provided Respondent's office with the documentation necessary for the loan modification process.

5. On May 4, 2010, Nexus Brown, a loan processing officer assigned to work on Parkourana's loan modification confirmed receiving additional documentation from Parkourana's for the loan documentation and told Parkourana the documents would be submitted to the lender the next day.

6. On June 29, 2010, Parkourana wrote Respondent terminating his services after receiving a notice of foreclosure. In the June 29, 2010 letter, Parkourana requested a full refund of the \$2,500. Respondent received the letter but did not provide a refund.

7. On February 23, 2011, Respondent's office debited an additional \$500 from Parkourana's bank account, which she had reversed on March 1, 2011.

8. As a result, Respondent collected advanced fees for mortgage loan modifications services for a client after October 11, 2009.

#### CONCLUSIONS OF LAW:

By collecting advanced fees for loan modifications after October 11, 2009, Respondent willfully violated Business and Professions Code section 6106.3.

#### Case No. 11-O-13344 (Complainant: Andree Neumeister)

#### FACTS:

1. On April 1, 2009, Andree Neumeister ("Neumeister") employed Respondent to obtain a loan modification on her behalf. Pursuant to the retainer agreement, Respondent would consult with REWIREMYLOAN ("REWIRE") to assist his firm in negotiating with the Neumeister's lender.

2. By May 2009, Neumeister had paid Respondent \$4,490 in advanced legal fees for her loan modification matter. According to Respondent and pursuant to the REWIRE invoice, \$3,340 of the \$4,490 was paid to REWIRE to process the loan modification on Neumeister's behalf.

3. During the period in question, REWIRE was an entity owned and controlled by Adeel Amin, a non-attorney.

4. According to Respondent, in August 2009, Respondent submitted a loan mitigation package to IndyMac on Neumeister's behalf.

5. Pursuant to Respondent's retainer agreement with Neumeister, Respondent's fees would not be earned until his office had negotiated and received an offer from Neumeister's lender. If Respondent was unable to obtain a favorable modification for Neumeister, the entire fee would be refundable less a \$750 fee for Respondent's time and efforts.

6. On October 7, 2009, IndyMac denied Neumeister's request for a loan modification.

7. In January 2010, Respondent emailed Neumeister regarding providing a refund of legal fees and said he would propose a payment plan by the end of the month. To date, Respondent has not refunded any of the fees to Neumeister.

#### CONCLUSIONS OF LAW:

By sharing a portion of the \$4,490 in attorney's fees paid by Neumeister with REWIRE, Respondent shared legal fees with a person who is not a lawyer, Respondent willfully violated Rules of Professional Conduct, rule 1-320(A).

By failing to refund at least \$3,740 in unearned attorney's fees to Neumeister, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2).

#### FEE ARBITRATION:

Within ten (10) days from the date Respondent of the effective date of discipline in these matters, Respondent shall:

Send clients/complaining witnesses Lynn and Arlington Houston a letter, notifying them that Respondent is required by court order to initiate, pay for, and participate in State Bar Mandatory Fee Arbitration, and that the purpose of the arbitration is to determine whether Respondent had earned all fees and/or costs paid by the clients to Respondent in the matter.

Send client/complaining witness Ronald Holmstrom a letter, notifying him that Respondent is required by court order to initiate, pay for, and participate in State Bar Mandatory Fee Arbitration, and that the purpose of the arbitration is to determine whether Respondent had earned all fees and/or costs paid by the client to Respondent in the matter.

Send client/complaining witness Monica Mena a letter, notifying her that Respondent is required by court order to initiate, pay for, and participate in State Bar Mandatory Fee Arbitration, and that the purpose of the arbitration is to determine whether Respondent had earned all fees and/or costs paid by the client to Respondent in the matter.

Send clients/complaining witnesses Andres and Hermina Huizar a letter, notifying them that Respondent is required by court order to initiate, pay for, and participate in State Bar Mandatory Fee Arbitration, and that the purpose of the arbitration is to determine whether Respondent had earned all fees and/or costs paid by the clients to Respondent in the matter.

Respondent will timely and fully participate in any resulting fee arbitration and abide by any final arbitration award. Within five (5) days of his receipt of a decision of the arbitrator, Respondent shall in writing advise the Office of Probation of the State Bar Court of the decision and provide a complete and exact copy of it. If it is found that Respondent owes the client/complaining witness any funds, in addition to any fee arbitration provisions that may apply, the amount owed shall also be considered as restitution owed to the client/complaining witness and its payment shall also become a part of this disciplinary resolution.

Respondent also waives the expiration of any time to resolve this dispute by fee arbitration. Respondent shall not make any claims for further payment from client beyond that which he/she has already received.

Respondent understands and agrees that his failure to write the letter, or to initiate, pay for, and participate in fee arbitration upon the client's agreement to do so, or to abide by any final arbitration order, shall constitute a violation of his probation conditions.

**ADDITIONAL RESTITUTION:**

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

<u>Payees</u>	<u>Principal Amount</u>	<u>Interest Accrues From</u>
Steven and Lori Hoffelt	\$3,995	June 18, 2009

Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than within one (1) year of the effective date of the discipline herein.

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was December 6, 2011.

**AUTHORITIES SUPPORTING DISCIPLINE.**

Standard 2.2(b) which states that culpability of a member of a violation of rule 4-100 of the Rules of Professional Conduct that does not include misappropriation shall result in at least a three month suspension.

Standard 2.10 states that a member's culpability of a violation of any provision of the Business and Professions Code not specified in these standards or of a willful violation of any Rules of Professional Conduct not specified in the Standards shall result in reproof or suspension according to the gravity of the offense or harm to the victim with due regard to the purposes of imposing discipline set forth in standard 1.3.

**COSTS OF DISCIPLINARY PROCEEDINGS.**

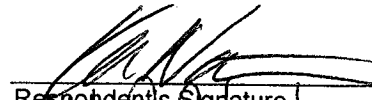
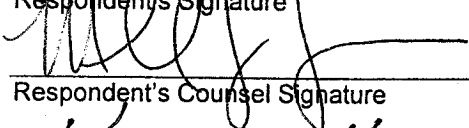
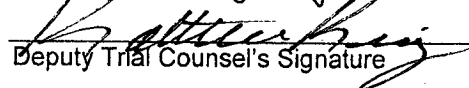
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of December 6, 2011, the prosecution estimated costs in this matter are \$12,029.25. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: Ken Nathanson	Case number(s): 10-O-00016, 10-O-05434, 10-O-02310, 10-O-04976, 10-O-06282, 10-O-06415, 10-O-07960, 10-O-11345, 11-O-10559, 11-O-11526, 11-O-13344
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### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>12/08/2011</u> Date	 Respondent's Signature	<u>Ken Nathanson</u> Print Name
<u>12-8-11</u> Date	 Respondent's Counsel Signature	<u>Michael G. Gerner</u> Print Name
<u>12-9-11</u> Date	 Deputy Trial Counsel's Signature	<u>Katherine Kinsey</u> Print Name

(Do not write above this line.)

In the Matter of: Ken Nathanson	Case Number(s): 10-O-00016, 10-O-05434, 10-O-02310, 10-O-04976, 10-O-06282, 10-O-06415, 10-O-07960, 10-O-11345, 11-O-10559, 11-O-11526, 11-O-13344
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### ACTUAL SUSPENSION ORDER


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

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

On page 18 of the stipulation, in the first paragraph under the heading "FEE ARBITRATION," "Within ten (10) days from the date Respondent of the effective date of discipline in these matters" is deleted, and in its place is inserted "Within ten (10) days from the effective date of discipline in these matters".

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.)**

12/13/11  
Date



Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 14, 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:

MICHAEL GALEN GERNER, ESQ.  
MICHAEL G GERNER, A PROF LAW CORP  
425 S BEVERLY DR STE 210  
BEVERLY HILLS, CA 90212

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

KATHERINE KINSEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 14, 2011.



Rose Luthi  
Case Administrator  
State Bar Court