

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 10-TE-02282-RAP
)	
ZACHARY IAN GONZALEZ,)	DECISION AND ORDER OF INACTIVE
)	ENROLLMENT (BUS. & PROF. CODE,
Member No. 259663,)	§ 6007, SUBD. (c)(1))
)	
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

This matter is before the court on the verified application of the Office of the Chief Trial Counsel of the State Bar of California (“Office of the Chief Trial Counsel”) seeking to involuntarily enroll respondent **Zachary Ian Gonzalez** (“respondent”) as an inactive member of the State Bar for his alleged misconduct of over 66 counts involving 11 client matters. (Bus. & Prof. Code, § 6007, subd. (c)(1);¹ Rules Proc. of State Bar, rule 461.) The Office of the Chief Trial Counsel, represented by Deputy Trial Counsel Timothy G. Byer, filed the application on July 1, 2010.

Respondent was given notice of this proceeding. (Rules Proc. of State Bar, rule 461.) Respondent did not file a response to the application and the time for doing so had expired. Accordingly, this matter was submitted for decision on July 22, 2010.

¹ References to sections are to the provisions of the Business and Professions Code, unless otherwise noted.

However, on July 23, 2010, respondent requested an extension of time to file his response. But because no good cause had been shown, the court denied his motion. Therefore, respondent's failure to file a verified response and request a hearing constituted a waiver of his right to a hearing. (Rules Proc. of State Bar, rule 462.)

On August 10, 2010, the court denied respondent's motion for reconsideration.

After reviewing and considering this matter, the court finds that respondent's conduct poses a substantial threat of harm to his clients or the public, and respondent is ordered involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(1).

II. JURISDICTION

Respondent was admitted to the practice of law in California on December 8, 2008, and has been a member of the State Bar at all times since.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Section 6007, subdivision (c), authorizes the court to order an attorney's involuntary inactive enrollment upon a finding that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public. In order to find that an attorney's conduct poses a threat of harm, the following three factors must be shown:

- (1) the attorney has caused or is causing substantial harm to his clients or the public;
- (2) the injury to the attorney's clients or the public in denying the application will be greater than any injury that would be suffered by the attorney if the application is granted or, alternatively, there is a reasonable likelihood that the harm will continue; and
- (3) there is a reasonable probability that the Office of the Chief Trial Counsel will prevail on the merits of the underlying disciplinary matter. (*Conway v. State Bar* (1989))

47 Cal.3d 1107; *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658, 661.)

Respondent's inactive enrollment is sought on the basis of the verified application for his involuntary inactive enrollment, the declarations under penalty of perjury and exhibits submitted by the State Bar. Based on the content of these declarations and their supporting exhibits, the court finds these declarations to be credible.

The application is based on matters not yet the subject of disciplinary charges pending in the State Bar Court. (Rules Proc. of State Bar, rule 461(a)(3).) The court's findings of fact are based on clear and convincing evidence.

A. Cases

In June 2009, the State Bar began receiving numerous complaints against respondent, with each complaint warranting a disciplinary investigation. As of June 17, 2010, there were 16 complaints pending, 11 of which are summarized below.

From February 2009 through February 2010, respondent had:

- engaged in a practice of illegally soliciting "mortgage loan modification" clients by telephone and by mail, in certain cases accompanied by fraudulent descriptions of his office as a governmental entity or the solicitation target's lender, from whom he received advanced fees;
- charged illegal and unconscionable fees;
- threatened civil and/or criminal proceedings against clients who terminated his services;
- induced his clients to waive respondent's liability without advising them of their right to independent counsel prior to waiving that liability;

- misrepresented the ability of those that employed him to cancel and rescind the engagement agreement;
- failed to competently perform a loan modification for any of these clients;
- failed to respond to their reasonable status inquiries;
- failed to provide these clients an accounting showing that their advanced fees had been earned; and
- failed to refund unearned fees.

The court's findings of fact and conclusions of law relating to each of the client declarations are as follows:

1. Case No. 09-O-13589 (Redevelopment Agency/Rodriguez)

In May 2009, Nicholas Hermsen, who serves as deputy city general counsel for the Cathedral City Redevelopment Agency in Cathedral City, California, received a copy of a letter sent by respondent to Juan Rodriguez, a Cathedral City resident. The letter purported to be from the "REDEVELOPMENT AGENCY CITY CATHEDRAL CITY." In the body of the letter to Rodriguez, the letter stated that "This letter is being sent pursuant to California Code section [sic] 2923.5.² We have made several attempts both by phone and mail to discuss your possible options. REDEVELOPMENT AGENCY CITY CATHEDRAL CITY realizes that sometimes things happen that are out of your control. However, we can not help you if we can not [sic] discuss possible options with you. We would like to talk you [sic] about your current loan situation to determine if you qualify. Please call us at (877-597-7779), so we can discuss in greater detail this opportunity to help you save your home."

Rodriguez brought his letter to the Cathedral City Redevelopment Agency and gave it to Hermsen, who informed him that the Redevelopment Agency was not the sender of the letter.

² California Civil Code section 2923.5 addresses the filing of Notices of Default on Mortgages.

2. Case No. 09-O-13845 (Wescom Central Credit Union Members/Luna)

In May 2009, Miller, in her capacity as an attorney representing Wescom Central Credit Union (“Wescom CU”), received copies of numerous solicitation letters mailed by respondent to Wescom CU members. One such Wescom CU member was Lionel Luna. The letters each included the name “WESCOM CU” above the addressee's name and address, and stated that “We have made several attempts both by phone and mail to discuss your possible options. WESCOM CU realizes that sometimes things happen that are out of your control. However, we can not help you if we can not [sic] discuss possible options with you. We would like to talk you [sic] about your current loan situation to determine if you qualify. Please call us at 888-688-0202, so we can discuss in greater detail this opportunity to help you save your home.”

Nowhere on the letter are the words “ADVERTISEMENT,” “NEWSLETTER,” or any similar language that would identify the letter as a solicitation.

3. Case No. 09-O-17413 (Salaiza)

In approximately February 2009, Victor Salaiza received a telephone solicitation from a representative of Pacific Loan Solutions (PLS), who invited him to visit their office to discuss a home mortgage loan modification. On or about February 12, 2009, Salaiza met Vick Vauhen and Wissam Ismail at the PLS offices. They promised Salaiza that they could obtain a modification in 30-90 days. They represented themselves as “the best in modifying loans” and showed him “samples” of modifications they said they had already achieved for other clients.

On or about February 12, 2009, Salaiza employed PLS and respondent, whom Salaiza understood to be the “in house attorney” for PLS, and paid the first installment of an advanced fee. Between that date and March 25, 2009, Salaiza paid respondent a total advanced fee of \$8,000.

For the next several months, it appeared to Salaiza that nothing was being done to obtain a loan modification on his behalf, despite Salaiza's having submitted all documents as requested by respondent.

In or about September 2009, Salaiza spoke with Ismail and informed him that Salaiza was terminating respondent's employment because they had not obtained a loan modification on his behalf during the time frame as agreed, and requested a full refund of the \$8,000 advanced fee.

On or about September 28, 2009, Salaiza received a Notice of Cancellation asserting that he was entitled to a refund of only \$4,000 of the \$8,000 he had paid to them. Thereafter, Salaiza received a partial refund in the amount of \$4,000 from PLS. Even though Salaiza has requested the \$4,000 balance due him, neither PLS or respondent has responded to the request, and he has not received the \$4,000 balance of his advanced fee.

4. Case No. 09-O-18914 (Lamers)

In or about April 2009, Kenneth Lamers received a phone solicitation from PLS informing him that they could assist him with his mortgage payments by negotiating a loan modification on his behalf. On or about May 2, 2009, Lamers met with AJ Huxhold at PLS, who informed Lamers that Huxhold assisted respondent with all loan modifications.

Lamers signed a loan modification retainer agreement on or about May 2, 2009, authorizing respondent to negotiate a loan modification on his behalf. Because Lamers did not have his checkbook with him for the quoted \$4,324 fee, Huxhold informed Lamers that his receptionist would follow Lamers home to pick up post-dated checks, which he then did. All checks were made payable to respondent. Huxhold instructed Lamers not to make any further mortgage payments.

Between in or about June 2009 and September 2009, Lamers called PLS to inquire about the status of the loan modification, and was told that negotiations were ongoing with Bank of America, Lamers's lender. When Lamers called Bank of America, he was informed that no loan modification was being negotiated by PLS on his behalf.

In or about October 2009, Lamers wrote to respondent and requested a full refund of the \$4,324 he had paid to him. Respondent did not respond to that request. Lamers then employed another attorney to assist in his refund attempt. In or about December 2009, Lamers's new attorney wrote a letter to respondent and requested a complete refund of Lamers's advanced fee. On or about December 10, 2009, respondent sent Lamers's attorney a check in the amount of \$1,729.60 as a partial refund. The attorney continues to hold the check in his account, as Lamers continued to request the full refund amount.

Lamers eventually took respondent to fee arbitration, and on or about April 2, 2010, the Riverside County Bar Association Fee Arbitration Program awarded Lamers a complete refund in the sum of \$2,594.40 (balance of the \$4,324 less the previous partial refund), plus the arbitration filing fee. Respondent was served a copy of the Findings and Award by the Riverside County Bar Association, but has neither responded nor paid the award, nor provided Lamers an accounting for his advanced fee.

5. Case No. 09-O-19279 (Torres)

In May 2009 Eva Torres received a copy of a letter sent by respondent. The letter purported to be from "Opteum Financial Services, LLC," Torres' mortgage company. In the body of the letter to Torres, the letter stated that "This letter is being sent pursuant to California Code section [sic] 2923.5. We have made several attempts both by phone and mail to discuss your possible options. Opteum Financial Services, LLC, realizes that sometimes things happen that are out of your control. However, we can not help you if we can not [sic] discuss possible

options with you. We would like to talk you [sic] about your current loan situation to determine if you qualify. Please call us at (877-597-7779), so we can discuss in greater detail this opportunity to help you save your home.”

On or about June 4, 2009, Torres called the telephone number on the letter and spoke with someone from PLS. She then went to PLS and employed respondent to negotiate a home mortgage loan modification, and paid an advanced fee of \$2,700, as the initial installment on a total advanced fee of \$5,400. Among the documents respondent required Torres to execute was a “Notice of Right of Rescission” which provided that Torres had “the legal right to rescind or cancel this contract without cost to [her], but [Torres] must give notice of [her] decision to cancel within three (3) business days from the date [she] signed the Loan Modification Agreement.” The Notice of Right of Rescission further provided that “you may use any written statement signed and dated by you that states your intention to cancel.”

Also among the documents respondent required Torres to execute was a document entitled “Stopped or Bounced Checks” which stated “IF YOU’RE [sic] CHECK BOUNCES OR PAYMENT IS STOPPED, YOU COULD BE LIABLE FOR THREE TIMES THE AMOUNT OF THE CHECK UP TO \$1,500.00 AS WELL AS ATTORNEY FEES, COURT COSTS, AND SERVICE COSTS” and cited California Civil Code, section 1719, in support of that proposition. The “Stopped or Bounced Checks” notice also included an underlined warning that “Bad check writers also face criminal penalties.”

On or about June 5, 2009, Torres faxed to respondent's office a letter in which she informed respondent “I would like to cancel my loan modification agreement with Pacific Loan Solutions and Attorney Zachary Gonzalez. Please return my check #354 and 355 to my property address[.] Thank you kindly for your time.... Please confirm this fax.” Instead of refunding Torres her advanced fee, respondent deposited the check on June 10, 2009. Respondent

performed no legal services of any value to Torres in connection with her loan modification. Respondent did not respond to Torres's request for confirmation of her fax.

Respondent has not refunded Torres's advanced fee nor provided her with any accounting for the advanced fee.

6. Case No. 09-O-19316 (Duarte)

In September 2009, Martin Duarte received a flyer from PLS mailed to his home, advertising a home mortgage loan modification program. On or about September 12, 2009, Duarte employed respondent and PLS to negotiate a home mortgage loan modification. On or about September 13, 2009, Duarte wrote a check to respondent for an advanced fee of \$1,400, as the initial installment on a total advanced fee of \$6,300.

Among the documents respondent required Duarte to execute was a document entitled “Stopped or Bounced Checks” which stated “IF YOU’RE [sic] CHECK BOUNCES OR PAYMENT IS STOPPED, YOU COULD BE LIABLE FOR THREE TIMES THE AMOUNT OF THE CHECK UP TO \$1,500.00 AS WELL AS ATTORNEY FEES, COURT COSTS, AND SERVICE COSTS” and cited California Civil Code, section 1719, in support of that proposition. The “Stopped or Bounced Checks” notice also included an underlined warning that “Bad check writers also face criminal penalties.”

On or about September 15, 2009, an employee of respondent (Veken “Vick” Nahhas) called Duarte and instructed him to pay the initial installment in cash. On or about September 16, 2009, Duarte's wife drove to respondent's office and delivered \$1,400 in cash to Nahhas. When Mrs. Duarte asked for a receipt, Nahhas initially refused to provide one, on the ground that “the person who gives out receipts was not available and had left everything securely under lock and key.” Mrs. Duarte demanded a handwritten receipt, which Nahhas then provided. Nahhas told Mrs. Duarte that she or Duarte could return that afternoon for an invoice.

Later that day, Duarte returned to respondent's office for the invoice, but when Duarte returned home he realized the invoice described an incorrect property address. The following day, on or about September 17, 2009, Duarte again returned to respondent's office, terminated respondent's employment, and demanded a refund of his advanced fee. Nahhas angrily refused to provide the refund, and told Duarte to leave the premises or he would call the police.

Duarte returned to his car in the parking lot of respondent's office building and began to make phone calls. While he was there, respondent approached him, introduced himself, and told Duarte he would review Duarte's file and call him the following morning. Respondent never called.

On or about September 21, 2009, Duarte again returned to respondent's office, and respondent refused to provide Duarte a refund. That same day, Duarte called his lender and learned that, after Duarte had terminated respondent's employment, respondent had submitted loan modification documents to Duarte's lender.

On or about September 21, 2009, Duarte faxed a letter to respondent repeating his termination of respondent's employment and repeating his demand for a refund of his advanced fee.

Respondent has not refunded Duarte's advanced fee nor provided him any accounting for the advanced fee.

7. Case No. 10-O-01289 (Melman)

On or about September 10, 2009, Klara Melman received a telephone solicitation from an employee of PLS, offering to negotiate for her a modification of her home mortgage loan. Melman asked the PLS employee several questions about the company, which the employee declined to answer, insisting instead that Melman visit the PLS office in Riverside and to bring with her certain documents concerning her home mortgage loan.

On or about September 16, 2009, Melman and her friend, Susan White, traveled to the PLS office and was met by “Vick” Nahhas, a non-lawyer who described himself as “a manager” for PLS. After briefly reviewing Melman's documentation, Nahhas asserted to Melman that she qualified for a loan modification, which PLS would handle on her behalf only if she employed PLS during this meeting. Nahhas told Melman that if she was not prepared to employ PLS immediately, that he would escort her off the premises and wish her “good luck” with her mortgage problems. When Melman told Nahhas that she was only there to get some answers to her questions about PLS, Nahhas showed her a website which Nahhas asserted proved that PLS was “licensed with the California State Board of Realtors.” Nahhas then showed Melman documents which he asserted showed that PLS had successfully obtained loan modifications for other local clients.

Nahhas then asserted to Melman that, if she immediately employed PLS and signed an engagement agreement, he would offer her “a favor” in the form of a reduced fee of 1.5% of her total mortgage loan, a fee which amounted to \$7,859.00. When Melman told Nahhas that she did not have that amount of money available, Nahhas told her she could make installment payments: \$2,619 that day, and two post-dated checks in the identical amounts. Melman told Nahhas that she did not have her checkbook with her; Nahhas responded that he would have another employee follow her home and pick up the three checks in person. Melman asked Nahhas if there was a “rescission period” during which Melman could terminate the agreement. Nahhas asserted that there was not: Melman could sign the engagement agreement or not, but once signed, “it was a legal contract with an attorney and [she could] not change [her] mind.” Nahhas informed Melman that she would be represented by respondent, who would “protect [her] from foreclosure” as long as she made her payments to PLS. Melman asked Nahhas what would happen if she became unable to pay both her mortgage and PLS, and Nahhas asserted that PLS

would “make the bank back-end” any delinquent mortgage payments, and that it was “better to pay [PLS] than to pay the bank.” Melman accepted Nahhas's proposal, and gave three checks for \$2,619 each to the employee who followed Melman to her home.

A few weeks after employing respondent, Melman tried to cancel the agreement, but could never get a live person on the phone on any of her numerous calls to PLS. Nahhas eventually returned Melman's voicemail message to assert that PLS was currently working on her loan modification. On or about October 11, 2009, Melman called PLS again, was informed that Nahhas no longer worked for PLS, that Melman's case was being handled by another PLS employee, and was transferred to that person's voicemail. Melman left a voicemail message for that employee repeating her desire to terminate PLS and obtain a refund of her advanced fee. On that same date, Melman read a newspaper article about the enactment of SB 94 (effective October 13, 2009), banning upfront advanced fees on loan modifications. Melman then called PLS again, left a message describing the article she had read, and demanding a refund. That employee returned Melman's call and informed her that she would not be permitted to cancel the agreement nor obtain a refund. Melman then called respondent, with whom she had never met nor spoken previously.

When respondent returned Melman's call, he asserted that she had waited too long to cancel the agreement, since respondent had already faxed her modification request to her lender. Melman became nervous, and for that reason asked White to call respondent, due to Melman's insecurity over her English proficiency when upset. White left respondent a voice mail message. When respondent returned the message, he repeated to White that Melman could not cancel their agreement nor obtain a refund. White informed respondent that Melman would then place a stop payment on the two remaining partial fee checks. On or about October 16, 2009, after White had left several additional voice mail messages to respondent, respondent agreed to refund \$1,619 of

the initial \$2,619 installment payment. Respondent told White that Melman had to come to respondent's office (like PLS, also in Riverside) to pick up the check in person. Melman's other roommate, Christine Cooper, drove Melman to respondent's office.

On arrival at respondent's office, Melman was directed to a room to wait for respondent while Cooper waited in the car. Respondent later entered the room with another man, introduced himself, and the other man introduced himself as "Sam," the "new manager" for PLS. Sam did all the talking: he asked why Melman decided to cancel the agreement, told her with a laugh that SB 94 was "only good for banks," and that he was willing to refund \$586 of the second initial installment payment (which Sam believed PLS had already cashed). When Melman told him she had placed a stop payment on that check, Sam said "then I do not owe you anything," ripped up the refund check Melman had traveled there to collect, and instructed her to leave the premises.

When Melman returned to the car and told Cooper what had happened, Cooper returned to respondent's office with Melman. Respondent again met with Melman, along with an individual who introduced himself as the company president. Again, respondent would not speak to Melman or to Cooper. The "company president" asserted that SB 94 was "unconstitutional," that if he wanted to collect advanced fees for loan modifications he could do so, and declined to pay Melman any refund. Cooper asked respondent if he planned to say anything on the matter; respondent merely shook his head "no." Melman and Cooper were then escorted off the premises.

8. Case No. 10-O-03162 (Saavedra)

In or about September 2009, Enrique Saavedra received a letter in the mail from PLS, stating that PLS helps homeowners with loan modifications. Saavedra called the telephone number on the letter and made an appointment for September 5, 2009.

On or about September 5, 2009, Saavedra went to PLS office in Riverside, met with an employee named "AJ" and discussed the fact that Saavedra was currently behind in his mortgage payments and in danger of foreclosure. AJ informed him that PLS and respondent could help him lower his mortgage payments with a loan modification. AJ and his manager quoted Saavedra an advanced fee of \$9,350, but agreed to accept an advanced fee of \$7,724.

On that same day, Saavedra employed respondent for a residential loan modification, and paid him in three post-dated checks: check number 1146 dated September 12, 2009, in the amount of \$3,000, check number 1147 dated October 5, 2009, in the amount of \$3,000, and check number 1148 dated November 1, 2009, in the amount of \$1,724. All checks were payable to respondent.

On or about October 29, 2009, Saavedra received a default notice on his home, and immediately called PLS; an employee named Adolfo told Saavedra to fax the notice to him. Saavedra asked Adolfo about the status of his loan modification, and Adolfo asserted it was still under review, and that he would call him back. Adolfo did not call Saavedra back.

On or about November 5, 2009, Saavedra received a letter from his lender denying his loan modification, on the ground that PLS did not submit the application on the correct forms, and that all relevant information was not provided. Saavedra again called Adolfo, who again asked Saavedra to fax the denial letter to him. Adolfo then asserted to Saavedra that the loan modification was still in review. Adolfo stated that he would call him around November 15, 2009. Adolfo did not call Saavedra back.

On or about November 17, 2009, Saavedra again called Adolfo, who told Saavedra that he was very busy, but that his loan modification was still under review, and that PLS was negotiating with his lender. Adolfo stated that he would call back with a further update on November 23, 2009. Adolfo did not call Saavedra back.

On or about November 20, 2009, Saavedra called his lender and was informed that his loan modification was not in review, and that there were no ongoing negotiations with PLS. The lender also informed Saavedra that his house was up for sale on February 3, 2010.

On or about November 20, 2009, Saavedra again called AJ and related to him the information from the lender. AJ said he did not have Saavedra's file in front of him, but that he would obtain it, review the documents, and return Saavedra's call on November 23, 2009. Adolfo did not call Saavedra back.

Between on or about November 24, 2009, and December 1, 2009, Saavedra called PLS to request the status of the loan modification, was unable to speak with a processor, but left messages for someone to return his calls. No one did.

On or about December 1, 2009, Saavedra called PLS and requested to speak with AJ, and was informed that AJ no longer had access to Saavedra's account. The receptionist informed Saavedra that someone else would return his call. No one did.

On or about December 5, 2009, Saavedra went to the PLS office and spoke with a "Sal" who instructed Saavedra to make an appointment to see a "Myra" and respondent. Saavedra made an appointment for December 7, 2009.

On or about December 7, 2009, Saavedra went to the PLS office for his appointment. Saavedra was informed that Myra was not at the office. An employee named "Jerry" asserted to Saavedra that PLS could not do a loan modification for him, at which point Saavedra requested a full refund of the \$7,724 he had paid to respondent. Jerry told Saavedra to make an appointment to meet with respondent on December 8, 2009, to discuss a refund. Saavedra made the appointment to meet with respondent for December 8, 2009.

On or about December 8, 2009, Saavedra, his wife, daughter, and his daughter's husband went to the PLS office in Riverside; they were asked to wait in the waiting room. When

Saavedra's son-in-law stepped outside the office, he saw a man getting into his car to leave. The son-in-law approached the man and asked if he was attorney Gonzalez; respondent replied that he was, and proceeded with Saavedra's son-in-law back into the office, accompanied by another man.

Respondent would not answer any questions. When Saavedra's son-in-law requested a full refund of the money Saavedra paid to respondent, the son-in-law was told to leave the office.

Saavedra and his wife continued the meeting with respondent and his "processor," and Saavedra informed respondent that he was not pleased with the way the loan modification was handled. Saavedra requested to see the paperwork that had been submitted to his lender, but respondent refused to produce it. Saavedra again requested a full refund of his \$7,724 advanced fee. Respondent asserted that Saavedra was entitled to only a 40% refund, and that the refund check would be available for pick-up in seven days.

On or about December 17, 2009, Saavedra's wife called PLS to see if the refund check was ready for pick-up. No one was available, so she left a message for a call back. No one returned her call.

On or about December 18, 2009, Saavedra's wife went to PLS and requested the refund check, was told that she needed an appointment, and then was escorted to a room where a "Mike" asserted that she was entitled to only a 10% refund. Mike began to yell at Mrs. Saavedra and told her a 10% refund was all she would receive. Mrs. Saavedra told Mike that PLS was a "scam," at which point Mike told her she would not get any refund, and to leave the office. Mike followed Mrs. Saavedra, yelling at her until she was outside on the sidewalk.

Thereafter, Saavedra did not receive any portion of a refund from respondent or PLS.

On or about April 9, 2010, the Riverside Superior Court, Small Claims, awarded Saavedra \$7,500 plus costs in a default judgment against respondent. Respondent has not paid any portion of that award.

9. Case No. 10-O-03507 (Castillo)

In or about June 2009, Jennie Castillo received a phone solicitation from PLS saying they could help her with her mortgage payment by negotiating a loan modification on her behalf. Castillo made an appointment to go to PLS the following week.

On or about June 12, 2009, Castillo went to PLS and was told by respondent's employee "AJ" that respondent and PLS could obtain modifications for both of Castillo's properties in three months. Castillo employed respondent that same day and paid an advance fee of \$2,907 for one property; on about June 29, 2009, she paid an advanced fee of \$3,599 for the loan modification on the second house.

Between in or about July 2009 and November 2009, Castillo called PLS on numerous occasions to inquire about the status of the loan modifications, and was always told that they were still negotiating with the banks. In or about December 2009, Castillo called the banks herself and was informed that no papers for a loan modification for either of her houses had been received from PLS.

In or about January 2010, Castillo received a letter from a debt collector informing her that her second home was in foreclosure and would be auctioned on March 23, 2010. Thereafter, Castillo began negotiating with Bank of America to try and save the house that was her residence. In or about January 2010, Castillo obtained the services of bankruptcy attorney Julie Aragon.

On or about February 1, 2010, Aragon wrote a letter to respondent informing him that she was Castillo's bankruptcy attorney, requested Castillo's loan modification file, and requested, on Castillo's behalf, a full refund of the \$6,506 that she paid to PLS for the loan modifications.

On or about February 4, 2010, respondent sent Aragon a response letter in which he withdrew from Castillo's case, promised to forward her loan modification file to Aragon's office, but denied the requested refund. Respondent also said that he would prepare an accounting and provide a partial refund per her retainer agreement.

To date, Castillo has not received an accounting or refund from respondent.

10. Case No. 10-O-03674 (Johnson)

In or about August 2009, Gary Johnson received a solicitation in the mail from PLS regarding lowering mortgage payments with a loan modification. Thereafter, Johnson called PLS and spoke with a person named AJ Huxhold ("AJ"), who identified himself as an assistant to respondent.

On or about September 4, 2009, Johnson employed PLS; the agreement indicated that respondent would represent him as the attorney for the loan modification. AJ instructed Johnson not to make any further mortgage payments to his lender.

On or about September 10, 2009, Johnson paid an advance fee of \$1,070; on or about October 28, 2009 and November 23, 2009, Johnson made additional advanced fee payments to respondent of \$1,000, respectively.

On numerous occasions between in or about December 2009 and January 2010, Johnson called PLS and requested to speak with AJ or respondent regarding the status of the loan modification and was told that neither AJ nor respondent were available to take his calls. On each occasion, Johnson left messages for AJ and respondent to return the calls, but never received a returned call.

In or about February 2010, Johnson was informed by his lender that PLS had not contacted them concerning a loan modification, and was also informed that his home would be going into foreclosure soon due to his unpaid mortgage arrears.

Thereafter, Johnson left several messages with different employees at PLS, canceling his loan modification agreement and requesting a full refund of his \$3,070 advanced fee. Johnson received no response to any message, and to date has not received a refund or an accounting.

11. Case No. 10-O-03809 (Perez)

In or about May 2009, Leticia Perez received a phone call from Christian Lopez (“Lopez”) with PLS, offering loan modification services. Perez informed Lopez that she was already negotiating with her lender for a loan modification, and that the bank had offered to do a loan modification for her. Lopez inquired as to her lender's rate, and Perez quoted the amount to him. Lopez assured Perez that PLS could beat the deal offered by her lender. Lopez further instructed Perez not to sign any papers with her lender until she met with him at PLS.

In or about June 2009, Perez and her husband went to PLS and met with Lopez, who reviewed her papers from the bank and informed them that PLS could do a better loan modification. Lopez informed them that respondent would be their attorney and that he would oversee the negotiations with the bank. Perez and her husband decided to allow respondent to handle the loan modification. They informed Lopez that they did not have any money with them to pay for the loan modification fees. Lopez agreed to come to their home, and instructed them to give him post-dated checks.

On or about June 9, 2009, Lopez came to the Perez home, and Perez signed a loan modification retainer agreement with PLS. Perez also gave Lopez checks (numbers 909, 910 and 911, dated June 9, 2009, June 30, 2009 and July 15, 2009, respectively), all payable to respondent in the amount of \$2,785 each.

In or about November 2009, the new loan modification papers arrived from PLS. Perez noticed that the rates were exactly the same as the rates that they had negotiated with their lender themselves. Perez called PLS and requested to speak with Lopez, and was informed that Claudia Rodriguez (“Rodriguez”) was now handling their loan modification. Rodriguez informed Perez that she should make an appointment to meet with respondent. Thereafter, Perez and her husband met with respondent, who requested that they be patient until he reviewed the documents again.

Between in or about November 2009 and January 2010, Perez called PLS on numerous occasions and requested to speak with respondent regarding the status of the loan modification. Perez left messages for respondent to return her calls. Respondent did not return any of the calls.

On or about January 7, 2010, Perez mailed respondent a letter and requested a refund of the \$8,355 dollars he had been paid for their loan modification. Respondent did not respond to the letter.

On or about January 19, 2010, Perez and her husband went to PLS's office. While waiting to speak with respondent, they saw Lopez and attempted to speak with him regarding a refund. Lopez would not discuss the loan modification or the refund with them. Finally, respondent appeared with an unidentified man. Perez informed respondent that she was unhappy with the offer he had negotiated and requested a refund of the money she had paid to him. Respondent would not discuss anything with Perez or her husband. The unidentified man would not allow Perez to speak, and asserted that they had signed an agreement, and if they were not now happy with it, to leave. Perez's husband raised his hand and told the unidentified man to allow her to speak. The unidentified man told Perez's husband that if he did not lower his hand, he would “break his fingers.” Not wanting an escalated confrontation, the Perezes left the office.

Upon leaving, Perez informed respondent that she would file a complaint. The unidentified man told her to go right ahead because they were closing the office.

To date, Perez has not heard from respondent, nor received a refund of the \$8,355 paid to him, nor an accounting of the funds paid.

B. Conclusions of Law

Under rule 461 of the Rules of Procedure, the application for involuntary inactive enrollment should cite the statutes, rules or court orders alleged to have been violated, or to warrant the action proposed, and the particular acts or omissions, or other acts, constituting the alleged violation or violations, or the basis for the action proposed.

In this application, the Office of the Chief Trial Counsel failed to indicate which violation refers to the factual allegations of each case. A catch-all summary of alleged violations without reference to the specific client matter is vague and does not provide this court with a proper framework for findings and conclusions. (See *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163 [case was dismissed because the charges were so vague that they did not provide respondent with sufficient notice of his alleged misconduct; it is incumbent upon the Office of the Chief Trial Counsel not only to determine which specific conduct of the respondent is at issue, but also to articulate the nature of the challenged conduct with particularity in the notice, correlating the alleged misconduct with the rule or statute allegedly violated thereby].)

Nevertheless, under section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges in the client matters as indicated:

1. **Rule 1-400(C) of the Rules of Professional Conduct³ (advertising and solicitation)** by delivering communications concerning the availability for professional employment of respondent to prospective clients with whom he had no family or prior professional relationship in all 11 client matters;
2. **Rule 4-200(A) (illegal and unconscionable fees for legal services)** by charging illegal and unconscionable fees for his services, as calculated by 1.5% of his clients' outstanding mortgage loan balances in the Salaiza, Duarte, Melman, Castillo, Johnson, and Saavedra matters and in light of SB 94, which bans upfront advanced fees on loan modifications;
3. **Section 6106 (moral turpitude)** by misrepresenting himself, in his solicitation letters, as being either the solicitation recipient's lender or a governmental agency in the Redevelopment Agency/Rodriguez, Wescom Central Credit Union Members/Luna, and Torres matters;
4. **Section 6106 (moral turpitude)** by misrepresenting the time frame of expected completion to his prospective clients, and by misrepresenting his prior success record in obtaining loan modifications for other clients in the Salaiza, Lamers, Castillo, Johnson, and Saavedra matters;
5. **Section 6106 (moral turpitude)** by misrepresenting to his clients their ability to rescind and/ or cancel their engagement agreement in return for a complete refund of their advanced fees in the Salaiza, Lamers, Duarte, Melman, Saavedra, and Torres matters;
6. **Section 6068, subdivision (m) (failure to communicate)** by failing to respond to his clients' repeated inquiries about the status of their loan modification and/or their

³ References to rules are to the current Rules of Professional Conduct, unless otherwise noted.

requests for refunds of their unearned advanced fees in the Lamers, Duarte, Saavedra, Torres, Johnson, Castillo, and Perez matters;

7. **Rule 3-110(A) (failure to act competently)** by repeatedly failing to perform any services to obtain a loan modification for clients in the Lamers, Saavedra, Johnson, Castillo, Salaiza, and Perez matters;

8. **Rule 3-700(D)(2) (failure to refund unearned fees)** by repeatedly ignoring several clients' requests for refunds of unearned fees in the Lamers, Duarte, Saavedra, Torres, Johnson, Castillo, Salaiza, Melman, and Perez matters;

9. **Rule 4-100(B)(3) (failure to render appropriate accounting)** by repeatedly failing to provide his clients an accounting showing that their advanced fees had been earned in the Lamers, Saavedra, Torres, Johnson, Castillo, Salaiza, and Perez matters;
and

10. **Section 6106 (moral turpitude)** by engaging in a scheme to defraud these clients, by exploiting them for personal gain and accepting employment without an intent to perform in the Lamers, Saavedra, Johnson, Castillo, Salaiza, and Perez matters.

However, based on the present evidence, there is no reasonable probability that the Office of the Chief Trial Counsel will prevail on the charge of aiding and abetting the unauthorized practice of law by non-attorney employees of respondent's office and PLS in willful violation of **rule 1-300(A)** in any of the client matters.

IV. DISCUSSION

In light of the foregoing, respondent should be enrolled inactive. He was given notice of the proceeding. (Rules Proc. of State Bar, rule 461.) By clear and convincing evidence, respondent has caused or is causing substantial harm to his clients or the public; respondent's clients or the public are likely to suffer greater injury if the involuntary inactive enrollment is

denied than respondent is likely to suffer if it is granted, or that there is a reasonable likelihood the harm caused by respondent will reoccur or continue; and that it is reasonably probable that the Office of the Chief Trial Counsel will prevail on the merits of the underlying disciplinary matter. And, respondent's conduct poses a substantial threat of harm to his clients or to the public. (Rules Proc. of State Bar, rule 466(b).)

Since 2009, the evidence before the court establishes that respondent has engaged in a pattern of attorney misconduct. In his representation of struggling homeowners, respondent has repeatedly failed to perform with competence, failed to communicate, failed to render an accounting, and failed to timely refund unearned fees. Several witnesses faced foreclosure, a few have received only a partial refund of unearned fees, and most have not received any refund at all. Moreover, respondent repeatedly committed acts of moral turpitude, misrepresentations, charging illegal and unconscionable fees, and unethical solicitations to prospective clients, among other things.

Respondent's misconduct has caused substantial harm to his clients and the public. Respondent continues to harm his clients by failing to refund unearned fees of more than \$38,968, as follows:

<u>Clients</u>	<u>Unearned Fees</u>
1. Salaiza	\$4,000
2. Lamers	\$2,594
3. Torres	\$2,700
4. Duarte	\$1,400
5. Melman	\$2,619
6. Saavedra	\$7,724
7. Castillo	\$6,506
8. Johnson	\$3,070
9. Perez	\$8,355

Absent the court's intervention, it is likely that respondent's misconduct will continue to harm his present and future clients.

As established above, the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail on over 66 counts of misconduct involving 11 client matters.

The court finds that respondent's conduct demonstrates a pattern of behavior, including acts likely to cause substantial harm. Accordingly, the burden of proof shifts to respondent to demonstrate that there is no reasonable likelihood that the harm will reoccur or continue. (Bus. & Prof. Code, § 6007, subd. (c)(2)(B).) Since there is no response from respondent, there is no evidence that there is no reasonable likelihood that the harm will reoccur or continue.

To resume active status, he will have to prove to this court that his conduct no longer poses a substantial threat of harm to the interests of clients or the public. (Bus. & Prof. Code, § 6007, subd. (c)(5).)

Therefore, there is clear and convincing evidence that respondent's conduct poses a substantial threat of harm to the interests of his clients and to the public. Accordingly, he should be enrolled inactive.

IV. ORDER

Accordingly, **IT IS ORDERED** that respondent **Zachary Ian Gonzalez** be enrolled as an inactive member of the State Bar of California, pursuant to Business and Professions Code section 6007, subdivision (c)(1), effective three days after service of this order by mail. (Rules Proc. of State Bar, rule 466(b).) The Clerk of the State Bar Court is directed to give written notice of this order to respondent and to the Clerk of the Supreme Court of California. (Bus. & Prof. Code, § 6081.) The State Bar should initiate disciplinary proceedings on an expedited basis. A Notice of Disciplinary Charges will be filed within 45 days following the effective date of the involuntary inactive enrollment. (Rules Proc. of State Bar, rule 480 et seq.)

IT IS FURTHER ORDERED that:

1. Within 30 days after the effective date of the involuntary inactive enrollment, respondent must:
 - a. Notify all clients being represented in pending matters and any co-counsel of his involuntary inactive enrollment and his consequent immediate disqualification to act as an attorney and, in the absence of co-counsel, notify the clients to seek legal advice elsewhere, calling attention to the urgency in seeking the substitution of another attorney or attorneys in his place;
 - b. Deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to the urgency of obtaining the papers or other property;
 - c. Refund any part of any fees paid in advance that have not been earned; and
 - d. Notify opposing counsel in pending matters, or in the absence of counsel, the adverse parties, of his involuntary inactive enrollment, and file a copy of the notice with the court, agency or tribunal before which the matter is pending for inclusion in the respective file or files;
2. All notices required to be given by paragraph 1 must be given by registered or certified mail, return receipt requested, and must contain respondent's current State Bar membership records address where communications may thereafter be directed to him;
3. Within 40 days of the effective date of the involuntary inactive enrollment, respondent must file with the Clerk of the State Bar Court an affidavit showing that he has fully complied with the provisions of paragraphs 1 and 2 of this order. The affidavit must also contain respondent's current State Bar membership records address where communications may thereafter be directed to him; and
4. Respondent must keep and maintain records of the various steps taken by him in compliance with this order so that, upon any petition for termination of inactive enrollment, proof of compliance with this order will be available for receipt into evidence. Respondent is

cautioned that failure to comply with the provisions of paragraphs 1 - 4 of this order may constitute a ground for denying his petition for termination of inactive enrollment or reinstatement.

IT IS SO ORDERED.

Dated: August 12, 2010.

RICHARD A. PLATEL
Judge of the State Bar Court