

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: 11-O-14497 (12-O-15738; 12-O-16063;
	)	12-O-16064; 12-O-16108; 12-O-16175;
	)	12-O-16213; 12-O-16505; 12-O-16817;
	)	12-O-17981; 13-O-10149; 13-O-10172;
	)	13-O-10173; 13-O-12284); 12-O-14609;
	)	(12-O-16713; 12-O-16230; 12-O-17882;
	)	12-O-16515; 12-O-16856; 12-O-17720;
GENE WOOK CHOE,	)	12-O-16997; 12-O-16862; 12-O-15946;
	)	12-O-16745); 12-O-11029 (12-O-11037;
No. 187704,	)	12-O-11549; 12-O-13014; 12-O-13059;
	)	12-O-13352; 12-O-14067)
	)	(Cons.) - DFM
)	
	)	DECISION INCLUDING DISBARMENT
	)	RECOMMENDATION AND INVOLUNTARY
A Member of the State Bar.	)	INACTIVE ENROLLMENT ORDER

INTRODUCTION

This decision results from the trial of three consolidated Notices of Disciplinary Charges, filed by the State Bar against Respondent during the period from December 7, 2012 to July 5, 2013. Altogether, Respondent **Gene Wook Choe** (Respondent) is charged here with 133 counts of misconduct, involving more than 32 different client matters.

The court finds culpability and recommends discipline as set forth below.

PERTINENT PROCEDURAL HISTORY

The first Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on December 7, 2012. The case was initially assigned to Judge Patrice McElroy of this court. However, on January 3, 2013, the matter was reassigned to the undersigned.

An initial status conference was held in the matter on January 14, 2013. At that time the case was given a trial date of April 9, 2013, with a seven-day trial estimate.

Respondent filed a response to the NDC on January 15, 2013.

On March 22, 2013, the State Bar initiated an expedited proceeding, case No. 13-TE-11511 (TE matter), seeking the involuntary inactive enrollment of Respondent pursuant to Business and Professions Code section 6007, subdivision (c)(1)¹. That matter was given a hearing date of April 16, 2013.

On April 8, 2013, at the pretrial conference of case No. 12-O-11029, the parties agreed that the matter should be abated until after the hearing of the pending TE matter.

On May 1, 2013, this court filed a decision in the TE matter, finding that the State Bar had established, by clear and convincing evidence, that Respondent's conduct then posed a substantial threat of harm to the interests of his clients and the public and ordering that Respondent be enrolled inactive pursuant to section 6007, subdivision (c)(1).

On May 16, 2013, this court scheduled a status conference on June 10, 2013, in case No. 12-O-11029 for the purpose of putting it back on trial schedule.

On May 24, 2013, the State Bar filed an NDC in 14 new cases (Case Nos. 11-O-14497, et al). Respondent filed a response to this second NDC on May 30, 2013.

¹ Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

At the June 10, 2013 status conference in the original proceeding, the abatement of the original cases was lifted, the new cases were ordered consolidated with the earlier cases, and the consolidated matters were scheduled to commence trial on August 28, 2013, with a 14 day trial estimate. A pretrial conference was scheduled for August 8, 2013.

On July 5, 2013, the State Bar filed a third NDC, alleging misconduct in 11 new cases. Respondent filed his response to this third NDC on July 29, 2013.

On August 8, 2013, during the pretrial conference in the consolidated first two proceedings, the parties agreed that the cases alleged in the newly-filed third NDC should be consolidated with the matters scheduled to begin trial on August 28, 2013, and it was so ordered. As part of that decision to consolidate, it was the agreement of the parties, and the order of this court, that each side would disclose any new witnesses to be called, and any new exhibits to be used, in conjunction with this new matter on or before September 3, 2013. In addition, none of the newly disclosed witnesses were to be called to testify at trial until the State Bar's case in chief on culpability on the earlier-filed actions has been completed, absent advance approval from this court.

Trial in the three consolidated matters began on August 28, 2013. The final witness's testimony was received on October 3, 2013; and, after some delay in the parties meeting and conferring regarding the remaining exhibits, the final evidence was received on October 18, 2013, and the evidentiary record then closed. Because of this court's prior decision to enroll Respondent inactive under section 6007, subdivision (c)(1), this court's decision in the instant proceeding was required to be filed before November 1, 2013.

The State Bar was represented at trial by Senior Trial Counsel Rizamari Sitton and Deputy Trial Counsel Charles T. Calix. Respondent was represented by Edward O. Lear of Century Law Group LLP and acted as co-counsel for himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's responses to the NDC, on the extensive stipulation of undisputed facts and conclusions of law previously filed by the parties, and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on March 18, 1997, and has been a member of the State Bar at all relevant times.

Background Facts

In about early 1999, Respondent, as the sole owner, opened a state-wide legal practice limited primarily to home-mortgage-loan modifications and other forms of home-mortgage-loan forbearance, including bankruptcy and foreclosure defense. Respondent initially operated his law practice under the business names "Choice Law Group" and "The Law Offices of Gene W. Choe."

According to Respondent, at one point in time, he owned and "operated three (3) law offices with over 35 lawyers and 50 administrative staff, with approximately over 1300 active clients." The State Bar began receiving complaints about Respondent and his law offices in 2011. Earlier in 2011, Choe had created Choice BK Law Group, and had begun to do bankruptcy business in that name, because of his concerns about the problems he was seeing in his business. He testified that he created the new name in the hope of avoiding liability.

In July 2012, Respondent had law offices in San Jose and Los Angeles. In about mid-2012, the State Bar interviewed Respondent and some of his employees. According to Respondent, those interviews and rumors about the State Bar's investigation of Respondent's practice caused many of his employees to quit and forced Respondent to sell his San Jose law office to its manager, attorney Luis Camacho, in about July or August 2012. When Respondent sold his San Jose office, Respondent did not honestly and properly notify the affected clients of that fact. Nor did Respondent otherwise properly withdraw from employment in the affected clients' matters. Instead, Respondent sent the affected clients written notices stating that he was closing his foreclosure litigation department because he had made the decision to pursue other areas of practice. Those notices falsely and deliberately implied that Respondent was no longer going to practice in the area of foreclosure law. In those notices, Respondent strongly recommended that the clients authorize Attorney Camacho's new law office to take over their matters.

In August 2012, Respondent abruptly sent notices to many clients, notifying them that he was closing down his foreclosure litigation practice and effectively terminating his relationship with them. He indicated that he had made arrangements with another law firm, CALGroup, to take over the files at no additional cost to the client. He did not disclose that he was considering joining that firm in the future.

In October 2012, the California Attorney General executed a search warrant and searched Respondent's Los Angeles office. The State Bar accompanied and assisted the Attorney General during that search. Respondent admits that "there continues to be a 'pending criminal proceeding' for his numerous alleged violations of California Civil Code section 2944.7(b) and other possible criminal violations."

Between July and October 2012, more than 30 to 40 of Respondent's employees purportedly quit because of the State Bar's (and the Attorney General's) investigations of Respondent's law practice.

Also in December 2012, Respondent moved his only remaining law office from the 4300 block of Wilshire Boulevard to 3699 Wilshire Boulevard, Suite 720, Los Angeles, California. At about that same time, Respondent also changed the business names under which he practiced law. More specifically, Respondent began practicing law under the names of "GWC Group P.C." and "GWC Law Corporation." In short, Respondent had begun to practice law representing primarily individuals seeking home-mortgage-loan modifications or other forms of mortgage-loan forbearance at a new address and using new business names.

FIRST NOTICE OF DISCIPLINARY CHARGES

Case No. 12-O-14067 (Ramirez)

On or about March 15, 2011, Noemi Ramirez (Ramirez) hired Respondent and his law firm. At the time, Ramirez had stopped paying the mortgage on her home because she was disabled due to hip surgery and unemployed.

On or about March 16, 2011, Ramirez paid Respondent approximately \$3,625 as attorney's fees. Between approximately March 22, 2011 and January 5, 2012, inclusive, Ramirez made 12 additional monthly installments of \$1,500 (totaling \$18,000), for a cumulative legal fees totaling \$21,625.

On or about March 22, 2011, Respondent provided and required Ramirez to execute and enter into a written fee agreement which included, inter alia, the following recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call [sic]for straight loan modifications only.

The agreement between Respondent and Ramirez also included a provision about the scope of Respondent's services, as follows: "The firm will file a lawsuit to challenge the validity of the foreclosure process and/or foreclosure documents. Should it become necessary, law firm will file a petition under the bankruptcy code. Further, it may provide eviction defense."

The Agreement between Respondent and Ramirez included a provision about Respondent's fees, as follows: "(1) \$3,250 for initial retainer on 3/21/2011; (2) \$2,000 for set up fee on 3/21/2011; (3) Thereafter, on the 1st of every month, beginning April 1st, 2011, Client shall pay \$1,500 until the lawsuit is completed or client is evicted after foreclosure, whichever is earlier. In the event client is evicted before the lawsuit has been concluded through dismissal or entry of judgment and/or a discharge has been entered in bankruptcy, client authorizes the firm to dismiss the lawsuit and/or the bankruptcy petition. (4) Client acknowledges that all of the fees paid shall be applied toward litigation services and court costs and none for loan modification services."

On or about June 2, 2011, Respondent submitted a loan modification application to Ramirez's lender. Ramirez was still disabled and unemployed at the time and the loan modification request and proposal was rejected by the bank.

In October 2011, the Ramirez's home went into foreclosure. Respondent's office had sent a cease and desist letter to the lender and thereafter successfully postponed the threatened foreclosure sale several times, until the end of February 2012, while attempting to secure a

modified loan. Because the lender had agreed to postpone the threatened foreclosure sale, Respondent's office did not file any formal litigation against it. During this same time period, Ms. Ramirez's health got sufficiently better that she was again able to resume her employment.

According to the testimony of Ramirez at trial, in October 2011, she quit talking with representatives of Respondent's office. Although the evidence indicates that Respondent's office was continuing to postpone the threatened foreclosure sale, she attributes her actions to purportedly being told that they felt there was nothing more the office could do for her. In February 2012, Ramirez terminated Respondent and made no further payments. Instead, she demanded that Respondent return all of the fees that his office had been paid. Soon thereafter, now that Ramirez was back at work, the lender agreed to modify her loan.

After Ramirez complained to the State Bar, Respondent provided Ramirez with an accounting of the work that his office had performed and returned \$10,986.

Count 1 - Section 6106 [Moral Turpitude - Misrepresentation to a Client]

Section 6106 provides, "The commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension." For purposes of State Bar disciplinary proceedings, moral turpitude is "any crime or misconduct reflecting dishonesty, particularly when committed in the course of practice" (*Read v. State Bar* (1991) 53 Cal.3d 394, 412.)

In this count the State Bar alleges that Respondent committed an act of moral turpitude by misrepresenting to Ramirez the work that his office would do pursuant to the contract. The evidence fails to support this allegation. The evidence is undisputed that Respondent's office endeavored both to avoid Respondent's home being sold in foreclosure and to obtain a loan modification of her prior loan. Both goals were successfully accomplished.

Ramirez testified that she did not feel that there had been any dishonesty with her in her initial meeting with Respondent's office and acknowledged that office's efforts to secure a loan modification on her behalf. The fact that Respondent's office was able to secure a postponement of the sale of Ramirez's home without having to file formal litigation should be the source of a compliment to it, not the basis for any charge of dishonesty.

This count is dismissed with prejudice.

Count 2 - Rules of Professional Conduct,² rule 3-110(A)
[Failure to Perform with Competence]

Rule 3-110(A) provides that an attorney "shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence."

In this count the State Bar alleges that, "by agreeing to perform litigation service for or on behalf of Ramirez, and thereafter not performing any such service, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence."

The evidence fails to support this allegation. The evidence is instead undisputed that Respondent's office successfully endeavored both to avoid Respondent's home being sold in foreclosure and to obtain a loan modification of her prior loan. Both goals were successfully accomplished. The fact that Respondent's office was able to secure a postponement of the sale of Ramirez's home without having to file formal litigation should be the source of a compliment to it, not the basis for any charge of incompetence.

This count is dismissed with prejudice.

² Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

**Count 3 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) -
Illegal Advanced Fee]**

Section 6106.3 states that an attorney's violation of Civil Code section 2944.7 constitutes cause for the imposition of discipline. Civil Code section 2944.7, subdivision (a)(1) states, in pertinent part: "[It] shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following: (1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform."

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of Ramirez. This court agrees.

On October 11, 2009, California Senate Bill number 94 (SB 94) became effective. SB 94 provides two safeguards for a homeowner/borrower who seeks help in obtaining a home-mortgage-loan modification or other forms of home-mortgage-loan forbearance for a fee or other compensation to be paid by the homeowner/borrower. First, SB 94 requires that the homeowner/borrower be given a written consumer disclosure that it is not necessary to pay a third party to negotiate a loan modification or forbearance. (Civ. Code, § 2944.6, subd. (a).)

Second, SB 94 prohibits advance compensation for any home-mortgage loan modification or other loan forbearance services. More specifically, SB 94 precludes an attorney from claiming, demanding, charging, collecting, or receiving *any* compensation for negotiating, attempting to negotiate, arranging, or attempting to arrange a home-mortgage-loan modification or other forms of home-mortgage-loan forbearance until the attorney has fully performed each and every service the attorney contracted to perform or represented would be performed. (Civ.

Code, § 2944.7, subd. (a)(1); *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 231-232.)

An attorney cannot avoid the application of Civil Code section 2944.7, subdivision (a)(1), by dividing or unbundling mortgage loan modification or forbearance services into their component parts and then charging separately for each component part after it is performed. (*In the Matter of Taylor, supra*, 5 Cal. State Bar Ct. Rptr. at p. 232.) Concomitantly, an attorney cannot avoid the application of Civil Code section 2944.7, subdivision (a)(1) by bundling his or her home-loan-modification or other loan forbearance services with non-modification or non-forbearance services and charging one fee for the bundle.

Respondent violated Civil Code section 2944.7, subdivision (a) by charging and collecting advanced fees from Ramirez for home-mortgage loan modification and other loan forbearance services before Respondent fully performed each and every service he contracted to perform. Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 4 - Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

Rule 3-700(D)(2) provides: "A member whose employment has terminated shall: ...(2) Promptly refund any part of a fee paid in advance that has not been earned."

As previously noted, Respondent did not provide an accounting and refund of fees to Ramirez until July 2012, and then only after the State Bar had become involved. At trial, Respondent stipulated to culpability under this count, and the court so finds.

Case No. 12-O-11037 (Vasilescu)

Prior to October 2011, Vasilica Vasilescu (Vasilescu) had retained The Gordon Law Firm to seek a loan modification on her behalf. On October 26, 2011, the lender denied her request and was threatening to pursue foreclosure. That other firm then recommended that Vasilescu retain Respondent's office to pursue litigation against the lender.

On November 12, 2011, Vasilescu was provided with a proposal by Respondent's office regarding what his office might be able to accomplish on her behalf with litigation. The proposal made clear that one of the principal objectives of litigation was to motivate the lender into providing a modification of the existing loan.

On or about November 14, 2011, Vasilescu hired Respondent and his law firm to file and pursue a lawsuit against her lender. The written fee agreement states:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The fee agreement provided the following fee schedule: "Client agrees to pay [Respondent] \$3,000.00 on November 12th, 2011 and \$1,500 monthly on the 15th day of each month, until the resolution of the case and services. 'Resolution of the case or services' is defined as either 1) loss of title to the real property known as 3830 N Fontana CT Visalia, CA 93291 and loss of possession of the Subject Property, or 2) Client begins payments on a loan modification of their home mortgage loan.'"

Vasilescu then provided Respondent with a series of checks, one in the amount of \$3,600 and the balance in the amount of \$1,500, each to be deposited by Respondent's office as Vasilescu's monthly payment obligations matured. Respondent thereafter presented and collected the fees by withdrawals from Vasilescu's bank accounts, as follows:

On or about November 14, 2011, Respondent presented the \$3,600 check for payment.

On December 9, 2011, Respondent's office sent a letter to Vasilescu's lender, challenging its loan practices, demanding that it cease and desist from any foreclosure actions, and indicating an intent to file litigation.

On or about December 14, 2011, Respondent presented for payment the second of Vasilescu's checks, in the amount of \$1,500. On the same day, an employee of Respondent's office, charged with handling loan modification efforts and paperwork, sent an email to Vasilescu, introducing himself and forwarding a list of documents that would be needed to pursue a loan modification. In response, Vasilescu sent an email, complaining that any efforts were being made in seeking a loan modification, specifically stating: "I want to go to COURT with a LAWYER. I do not give any info to somebody else."

On or about January 23, 2012, Respondent and his law firm presented for payment the third of Vasilescu's checks, in the amount of \$1,500. Vasilescu then terminated Respondent's services and demanded a refund of all monies paid. On June 4, 2012, Respondent provided a refund of unearned fees in the amount of \$3,751.

Count 5 - Section 6106 [Moral Turpitude]

In this count, the State Bar alleges that Respondent mislead Vasilescu about the scope of the services he would provide to her, to wit, that the scope of the services he would provide would include litigation services.

The evidence fails to support this charge. Both the November 12, 2011 proposal by Respondent's office and the contract signed by Vasilescu make clear that Respondent was going to provide litigation services as a component of seeking to save her house from foreclosure and seek a loan modification. His office had taken steps that were consistent with successfully pursuing both objectives and which were the preliminary steps in filing litigation, if such proved to be necessary.

Given that Vasilescu made a decision to terminate Respondent's services so soon after he had been hired, it cannot be said that his office had no intention of filing litigation on her behalf. In view of the enormous amount of litigation, frequently successful in stopping foreclosure actions, filed on behalf of numerous other complaining former clients in this matter, there is every reason to believe that the office would have filed the contemplated litigation when it became appropriate to do so.

This count is dismissed with prejudice.

Count 6 - Rule 3-110(A) [Failure to Perform with Competence]

At trial, the State Bar asked that this count be dismissed. At that time the count was dismissed by the court with prejudice.

Count 7 - Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

In this count the State Bar alleges that Respondent did not earn all of the \$6,600 advance fees received by him and did not return the unearned \$3,751 until on or about June 4, 2012. Respondent stipulated at trial, and this court finds, that Respondent's late refund of this unearned fee was a violation of rule 3-700(D)(2).

Case No. 12-O-11029 (Capuano)

Steven Capuano (Capuano) is a member of the sheriff's department in Camarillo, California. In 2010, as he describes it, he got "upside down" with the negative amortization mortgage on his house. The monthly payments were more than he could handle. He first went to another company, Mortgage Police, for assistance in seeking a loan modification, but those efforts were unsuccessful.

In June 2011, Capuano received a mail solicitation that suggested he use Respondent's office "to stop an impending foreclosure sale" on his residence. Such a sale was then scheduled on July 27, 2011, for Capuano's home.

On or about July 12, 2011, Capuano hired Respondent's law firm³ to attempt to deal with the then pending foreclosure efforts by the lender and to seek a loan modification. Capuano's written fee agreement with Respondent included the following language:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

This contract provided for a \$20,000 "flat" fee, with \$5,000 due on July 12, 2011; \$3,500 to be paid by way of post-dated checks in each of the four months from August 12, 2011 to November 12, 2011 (totaling \$14,000); and \$1,000 due on December 12, 2011, "to complete the total \$20,000 fee."

³ Capuano testified that he viewed himself as hiring Respondent's law firm, rather than Respondent personally. Ultimately, the bulk of the work was done by others in the firm.

On or about July 12, 2011, Respondent collected and received six check-payments from Capuano: one check in the approximate amount of \$5,000; four checks, each in the approximate amount of \$3,500; and one check in the approximate amount of \$1,000.

Respondent presented to the bank only three of Capuano's checks, as follows:

- On or about July 13, 2011, Respondent deposited the \$5,000 check.
- On or about August 15, 2011, Respondent deposited a \$3,500 check.
- On or about September 13, 2011, Respondent deposited another \$3,500 check.

Respondent's firm made efforts to obtain a loan modification, but those efforts were unsuccessful. In the interim, the foreclosure sale had been postponed and re-scheduled for August 31, 2011.

On the morning of the scheduled August 31, 2011 sale, Capuano was contacted by Respondent's office and advised that Capuano needed to file an emergency bankruptcy petition in order to stop the foreclosure sale. However, when Capuano found himself unable to get the papers filed in Santa Barbara before the sale was scheduled to occur, he contacted Respondent, who made arrangements to have his office prepare and file the petition electronically. Respondent's office was successful in doing that at 10:51 a.m., just nine minutes before the scheduled sale. The filing of this emergency petition stopped the scheduled foreclosure from going forward that day.⁴

⁴ Capuano was no stranger to this technique of using a bankruptcy petition to stop a foreclosure sale. Before hiring Respondent, he had been represented by an attorney (Rounds), who, in February 2011, also filed a chapter 13 petition on Capuano's behalf, together with a request for an automatic stay, thereby preventing a foreclosure sale scheduled at that time from going forward. This petition was dismissed when Capuano, by design, failed to show up for the required "341(a)" meeting. (Ex. 80, pp. 14-16.)

Capuano subsequently contacted a bankruptcy attorney in Respondent's office,⁵ who advised Capuano and his wife that the filing of a chapter 11 bankruptcy petition would be the best way to proceed. Because Capuano's situation was more appropriate for a chapter 11 bankruptcy petition than a chapter 13 proceeding, the previously-filed chapter 13 petition was then allowed to be dismissed by the court. Capuano then entered into a new fee agreement with Respondent's law office, although the letterhead on the fee agreement reads, "Choice Bankruptcy Law Firm, LLP." The fee agreement provided that Respondent's office would be compensated on an hourly basis for its work, but that Capuano would advance a significant retainer to secure the expected fees. More specifically, the agreement provided that Capuano was to pay \$40,000 in advanced fees and \$5,000 in advance costs on or before September 29, 2011. However, a portion of this \$45,000 was to be made by way of a credit of \$7,000 from the fees previously paid to Respondent's office.

On September 28, 2011, Capuano paid Respondent approximately \$33,000, for filing a chapter 11 bankruptcy petition, and handling the ensuing proceedings, and provided him with an additional \$5,000 cashier's check for "hard costs." (Ex. 59, p. 1.)

On or about September 29, 2011, Marc Collins of Respondent's office filed a chapter 11 bankruptcy petition on behalf of the Capuanos. (Ex. 61, pp. 3-4.) Collins, rather than Respondent, is identified in the papers as the attorney for the Capuanos.

⁵ Capuano's sworn statements about which attorney he talked with are confusing and possibly conflicting. During the instant trial, he testified that he had talked with Peter Solimon. In a declaration filed with the bankruptcy court, however, he stated that he talked with Marc Collins. Both were bankruptcy attorneys in Respondent's office at the time, but Collins was a much more experienced bankruptcy attorney and was hired by Respondent for the purpose, inter alia, of overseeing any Chapter 11 filings and as the manager of the bankruptcy department in Respondent's office.

The bankruptcy court issued an Order to Show Cause (OSC) why Capuano's petition case should not be dismissed for failure to file the schedules. An OSC hearing was set for November 9, 2011.

On or about November 8, 2011, Respondent's law firm filed on behalf of the Capuanos a motion to extend the time within which to file the schedules. The attorneys listed in the caption of this pleading are Marc Collins, Peter Solimon, and Mitchell Chang, rather than Respondent personally. (Ex. 65.) Respondent's law firm also filed a set of schedules, including a Disclosure of Compensation of Attorney for Debtor. This disclosure statement included the \$45,000 fee and was electronically signed by Marc Collins of Respondent's office.

On or about November 9, 2011, the bankruptcy court granted the motion to extend time to file the necessary schedules to November 19, 2011. The court also ordered Respondent to cure the deficiencies noted by the court in the schedules that had been filed the previous day. Attorney Collins attended the hearing, as did Capuano. During this hearing, Collins informed the court that he was the manager of the bankruptcy department at Respondent's firm and accepted responsibility for the deficient filing. He also indicated that the required documents could be filed, and the deficiencies corrected, within the ten days being afforded by the court.

No subsequent schedules were filed with the court and no effort to obtain an extension of time made. As a result, on November 21, 2011, the bankruptcy court issued an Order and Notice of Dismissal for Failure to File Schedules, Statements and/or Plan. Capuano was sent a copy of the notice of dismissal by the court.

The foreclosure sale on the home was then scheduled for December 20, 2011. On Friday, December 16, 2011, Capuano sent an email to Stephen Watkins, a paralegal in Respondent's firm, asking for a status report:

Is there any update on my case? I never heard from Marc by phone, but I know he's a busy guy. I'm receiving junk mail solicitations showing a 12/20 sale date on our house. Do I need to be concerned?"

On Monday morning, December 19, 2011, Watkins replied, "We are re-filing your case today. No need to be concerned about the sale date." Later that same day, Watkins sent an additional email to Capuano: "Your Sale Date was pushed off again to January 12, 2012. I have an updated declaration and a couple of other papers for you to sign, which I will send to you tomorrow."

Unbeknownst to either Respondent or Capuano at the time, Collins had been making plans at that time to leave Respondent's office and to open his own competing law firm. Rather than file the new chapter 11 papers as promised, Collins left the firm on December 21, 2011, without advance notice to Respondent or Capuano. Watkins joined him at the new firm.

Capuano learned of Collins' departure from Respondent's firm on January 6, 2012, when Capuano called Collins on Collins' cell phone number to get a status report on his matter and was then told by Collins that he was no longer working for Respondent. Capuano then promptly hired Collins to replace Respondent's office in his bankruptcy and loan modification efforts. A letter, dated January 9, 2012, was then sent by Collins to Respondent's office, asking for Capuano's file and making a demand for an accounting and the transfer to Collins of all of the \$45,000 that had previously been paid to Respondent's office. In response to the demand for an accounting, Respondent replied by stating that one would be prepared but that there would be delay in providing it. Ultimately, no accounting was ever timely provided.

The letter also forwarded a substitution of attorneys for Respondent to sign. The bankruptcy court records indicate that Respondent's office ceased to be counsel of record in the case on January 11, 2012.

On January 11, 2012, Collins filed an Emergency Motion to Reopen Bankruptcy Case and Reinstate Automatic Stay in the previously dismissed bankruptcy matter. Attached to this request were declarations from both Capuano and Collins. In these declarations, Collins and Capuano sought to place all blame on Respondent for the mishandling of the dismissed bankruptcy petition, without acknowledging Collins' involvement and oversight of both the case and the department. When the motion was filed, it was denied by the court. As a result, the scheduled foreclosure sale went forward on January 12, 2012, and the Capuanos lost their home.

Collins billed Capuano \$5,862 for the services he provided, both in filing the unsuccessful motion to reopen the bankruptcy petition and in successfully seeking to forestall the immediate eviction of the Capuanos from their former home. Capuano paid the bill received from Collins and then filed an in pro per motion in the bankruptcy court to require both Respondent and Collins to disgorge all of the fees that they had previously received.

The hearing of the disgorgement motion was held on May 9, 2012. Respondent was not personally present, but sent an attorney from his office to oppose the motion. Collins was also present. At the course of the extended hearing, during which Capuano was put under oath, the court noted the hypocrisy of Collins' criticisms of Respondent's purported handling of the dismissed bankruptcy petition; concluded that neither Respondent nor Collins had sought approval to act as counsel in the bankruptcy matters, a prerequisite to being paid; and ordered both firms to disgorge previously received fees. In conjunction with requiring Respondent to return all of the funds that he had previously received, including those fees paid in pursuing a loan modification, the court concluded that Respondent's conduct in charging the fees for loan modification work violated the new statute forbidding such advanced fees. At the conclusion of

the hearing, the court suggested to the attorney from Respondent's office that she "might want to order a disk of today's hearing so Mr. Choe can hear it himself." (Ex. 80, p. 63.)

Respondent eventually disgorged all of the fees that he had previously received from Capuano.

Count 8 - Section 6106 [Moral Turpitude]

In this count the State Bar again alleges that Respondent committed an act of moral turpitude by misrepresenting the work that his office would do pursuant to the contract. As a basis for that charge, it is alleged that Respondent's office did nothing to pursue either litigation or a loan modification on Capuano's behalf.

The evidence fails to support this alleged culpability. The evidence is undisputed that Respondent's office gathered and evaluated the evidence regarding the merits of a potential lawsuit against the lender and then advised Capuano fully about the results of their analysis. The office also gathered and evaluated the information relevant to obtaining a loan modification and provided the client with this information. This was precisely the work that was contemplated by the fee agreement, and it was done in the context of a looming foreclosure date just two weeks away at the time that Respondent's office was first hired. Given the absence of any indication that there was a meritorious lawsuit to be filed against the lender, Respondent cannot be accused of an act of moral turpitude for failing to file one.

This count is dismissed with prejudice.

Count 9 - Rule 3-110(A) [Failure to Perform with Competence]

In this count the State Bar alleges, "By agreeing to perform mortgage loan forbearance services for or on behalf of Capuano and not performing such services, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence."

As discussed above, the evidence fails to provide clear and convincing proof that Respondent's office failed to provide loan modification services to Capuano.

This count is dismissed with prejudice.

Count 10 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

Respondent violated Civil Code section 2944.7, subdivision (a) by charging and collecting advanced fees from Capuano for home-mortgage loan modification and other loan forbearance services before Respondent fully performed each and every service he contracted to perform. Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 11- Section 6068, subd. (m) [Failure to Inform Client of Significant Development]

Section 6068, subdivision (m), of the Business and Professions Code obligates an attorney to "respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services."

In this count the State Bar alleges, "By not informing Capuano that the bankruptcy court issued an order to show cause and set a hearing on November 9, 2011, that the court issued an order on November 9, 2011 to cure the filing deficiencies in his bankruptcy case, and by not informing Capuano that the court dismissed his bankruptcy petition, Respondent failed to keep a

client reasonably informed of significant developments in a manner in which Respondent had agreed to provide legal services.

The evidence fails to provide clear and convincing evidence supporting this charge. Indeed, the State Bar's evidence affirmatively disproves the factual basis for the above allegations. In the first instance, Respondent was not handling the Capuano bankruptcy; attorney Collins was. Further, Respondent was clearly informed that the court had set a hearing on November 9, 2011, as reflected by the simple fact that Capuano was present at it! Obviously, Capuano was also made aware of what the court ordered during the course of that hearing – since he was present at it. Then, as reflected in Capuano's email message of December 17, 2011, and the responses from paralegal Wright on December 19, 2011, Capuano had previously been made aware prior to that date of the fact that the prior bankruptcy proceeding had been dismissed. Finally, as specifically shown in the State Bar's Exhibit 73, at page 11, Capuano stated under oath in his 2012 declaration to the bankruptcy court that he had been informed of the bankruptcy dismissal. ("When our Chapter 11 case was dismissed, I was given assurances by Choe's office that steps were being taken to rectify the situation.")⁶

This count is dismissed with prejudice.

Count 12 - Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

Rule 4-100(B)(3) requires a member to "maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them[.]" This duty includes providing an

⁶ The absence of any allegation by Capuano in this declaration, that he was unaware of the dismissal, is highly significant, due to the fact that he is seeking at a late date to set the dismissal aside. This is especially true, given Capuano's obvious, and disingenuous, efforts in that declaration to accuse Respondent of responsibility for the handling of the bankruptcy file.

accounting to the client regarding fees where an advance fee has been received. (*In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757-758.)

Capuano, acting through attorney Collins, demanded that Respondent's office provide an accounting of the advanced fees and costs paid to Respondent by Capuano. That accounting was not timely provided. That failure constituted a willful violation by Respondent of rule 4-100(B)(3).

Count 13 - Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

During the course of Respondent's representation of Capuano, Capuano paid to Respondent's office \$45,000 in legal fees and \$5,000 in costs. When the bankruptcy was commenced, Capuano paid \$40,000 for advanced fees in that matter (including transferring a \$7,000 credit for the unearned fees in the loan modification matter). Respondent had not earned all of the \$40,000 at the time that the bankruptcy action was terminated in November and Respondent's office was terminated in January 2012.

At the time that Respondent was terminated as counsel, an accounting and a return of fees was demanded. Respondent failed to return any fee until after being ordered by the bankruptcy court to disgorge fees in May 2012. This failure by him represents a willful violation by him of his duties under rule 3-700(D)(2).

Case No. 12-O-13352 (Rodriguez)

On March 26, 2012⁷, Miguel A. Rodriguez-Parra ("Rodriguez") hired Respondent. Rodriguez was significantly in arrears in his mortgage, was facing a pending foreclosure sale, and had previously hired an attorney, who had previously filed a civil action unsuccessfully

⁷ The stipulation of the parties erroneously, and presumably mistakenly, stated that Respondent was hired by Rodriguez in March 2011. The stipulation also mistakenly states that the first payment was in 2011. The court declines to accept those facts.

challenging the appropriateness of the foreclosure. It is unclear whether Respondent was informed of that prior action at the time that Rodriguez hired Respondent's office.

The fee agreement between Respondent and Rodriguez defined the scope of services to be "those necessary to represent the Client in challenging validity of foreclosure proceedings, related debt counseling and restructuring, and bankruptcy." It included language whereby Rodriguez "acknowledged" that "mortgage loan negotiation is regulated by California law and where the work is only for loan modification, a client is not required to pay until that portion of the work is performed." With regard to fees, the agreement provided for a "minimum total retainer" of \$10,000, with an initial payment of \$3,000, a \$2,000 payment in the second month, and \$1,000 for each succeeding month until resolution of the case.⁸

In or about March 26, 2012, Rodriguez paid Respondent \$3,000.

Respondent's office then took immediate steps to assist Rodriguez in avoiding the foreclosure sale, then scheduled for the first week of April, 2012. Information was gathered for the purpose of subsequently submitting it to the lender as part of pursuing a loan modification. Correspondence was sent to the lender, challenging its entitlement to pursue the foreclosure. And an action was filed in Superior Court on April 3, 2012, seeking a temporary restraining order with regard to the scheduled sale.

On filing the TRO, Respondent's office determined that the prior civil action on behalf of Rodriguez had the legal effect of barring the subsequent civil action and TRO request. As a

⁸ Respondent's office had on staff an employee who served as an interpreter for Spanish-speaking clients. This employee participated in all of the communications between Rodriguez and other representatives of Respondent's firm. In addition, this interpreter also provided to Rodriguez a Spanish-translation of the fee agreement, which Rodriguez signed in addition to the English version.

result, Respondent's office withdrew the ex parte application for a TRO and requested the dismissal of the action.

At the same time, representatives of Respondent's office discussed with Rodriguez the fact that the only manner in which the foreclosure sale could be postponed was to file a bankruptcy petition. Rodriguez authorized the firm to file the bankruptcy and actively participated in providing the information⁹ and signing the documents required for the filing. The information provided by Rodriguez included a false Social Security number. Rodriguez, in fact, did not have legal status to be in the United States and had been using this false Social Security number for a period of time.

On or about April 5, 2012, Respondent and his law firm filed a chapter 7 bankruptcy petition on behalf of Rodriguez.

On or about April 6, 2012, the bankruptcy court issued a notice that filing requirements were not met and ordered that the filing defects must be corrected by April 9, 2012, or the case may be dismissed.

After the bankruptcy was filed, Rodriguez had a conversation with a Spanish-speaking paralegal in Respondent's San Diego office regarding the fact that he had provided a false Social Security number. The paralegal, who was educated as an attorney in Mexico but not licensed to practice in California, advised Rodriguez that his filing of the bankruptcy petition was unlawful.

When bankruptcy attorneys were advised of the problem with the Social Security number, it was their conclusion that Rodriguez could nonetheless pursue a bankruptcy petition by using his taxpayer identification number. Rodriguez, however, concluded that he did not

⁹ In providing this information, Rodriguez filled out with the assistance of his English-speaking daughter a Client Questionnaire, which begins the following statement: "The information you are providing to us on this Questionnaire is used in preparing your documents for filing with the Bankruptcy Court."

want to proceed any further. Respondent then directed that the firm not go forward with the bankruptcy, subsequently terminated his relationship with the firm, falsely claimed that he had never authorized the filing of the bankruptcy action, and demanded an accounting and that Respondent repay all of the fees that had previously been advanced.

On or about April 26, 2012, the bankruptcy court dismissed Rodriguez's petition for failure to file the necessary documents. On or about May 25, 2012, the court approved the bankruptcy trustee's report of no distribution and closed Rodriguez's bankruptcy case.

On or about June 5, 2012, Respondent's accounting department mistakenly collected \$1,000 from Rodriguez's bank account by depositing one of the post-dated checks. This money, however, was returned by Respondent's office on June 27, 2012.

Count 14 - Section 6106 [Moral Turpitude]

In this count, the State Bar alleges that Respondent was guilty of an act of moral turpitude by withdrawing \$1,000 from the bank account of Rodriguez, without the consent or knowledge of Rodriguez, after Respondent's office had been terminated. This court agrees.

While the withdrawal resulted from the improper performance by Respondent's accounting department, rather than any act of dishonesty by Respondent himself, the withdrawal was done many weeks after Respondent's office had been terminated by Rodriguez and after Respondent should have made certain that no further withdrawals of funds would be effected by his office. Respondent was candid in his testimony regarding the ongoing problems that he encountered with the accounting department not being apprised of, or responding appropriately to, a client's decision to terminate an existing fee agreement. Here, Respondent's failure to affirmatively and personally take steps assuring that funds would not be improperly withdrawn

from the bank account of Rodriguez, many weeks after the right to withdraw such funds had ended, constituted an act of gross negligence and a willful violation of section 6106.

Count 15 - Rule 3-110(A) [Failure to Perform with Competence]

In this count the State Bar alleges, “By not performing the mortgage loan modification services that he had agreed to do for Rodriguez and by initiating bankruptcy proceedings on behalf of Rodriguez, and thereafter not filing the necessary documents in court and not taking any other action to advance the proceedings, resulting in dismissal of the case, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

The evidence fails to provide clear and convincing evidence supporting this charge.

Respondent was hired by Rodriguez to try to save his home from foreclosure, then scheduled for less than two weeks away. In the time available, Respondent’s office took appropriate steps to gather information for a possible future loan modification, filed a lawsuit, and then filed a bankruptcy petition with the client’s authorization. The fact that the required schedules were not subsequently filed is not a consequence of any failure by Respondent to act with competence, but rather is the result of the change of heart by Rodriguez about the bankruptcy and his instruction to the firm not to perfect the petition, based on the concerns by Rodriguez that his illegal status in this country could be jeopardized by allowing the bankruptcy petition to go forward.

This count is dismissed with prejudice.

Count 16 - Section 6104 [Appearing for Party Without Authority]

Section 6104 of the Business and Professions Code prohibits an attorney from willfully or corruptly appearing without authority as an attorney for a party to an action or proceeding

In this count the State Bar alleges that Respondent violated section 6104 by filing the bankruptcy petition “without the knowledge or consent” and contrary to the express directive of him.

As discussed above, the evidence fails to provide clear and convincing evidence supporting this charge. While the State Bar relied on the testimony of Rodriguez in filing this charge, this court finds that his testimony lacked credibility and candor.

Accordingly, this count is dismissed with prejudice.

Count 17 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

Respondent violated Civil Code section 2944.7, subdivision (a) by charging and collecting advanced fees from Rodriguez for home mortgage loan modification and other loan forbearance services before Respondent fully performed each and every service he contracted to perform. Respondent’s violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 18 - Section 6068, subd. (m) [Failure to Inform Client of Significant Development]

In this count the State Bar alleges that Respondent failed to inform Respondent that the bankruptcy petition had been filed; that the court had ordered that additional documents be filed; and that the court had dismissed the case.

The evidence fails to provide clear and convincing evidence supporting this charge.

This count is dismissed with prejudice.

Count 19 - Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

As previously noted, Rodriguez demanded that Respondent provide an accounting of his advanced fees. Respondent failed to do so. This failure was a willful violation of Respondent's duties under section 4-100(B)(3).

Case No. 12-O-11549 (Randolph)

On or about November 18, 2011, Leilani Randolph (Randolph) hired Respondent and his law firm to represent Randolph's mother in a home mortgage foreclosure proceeding. Respondent was aware that his office was being hired by Randolph, but did not participate in the initial meeting with her. At the time that Respondent's office was hired, the home was scheduled to be sold at foreclosure on December 1, 2011.

On or about November 18, 2011, Respondent and Randolph entered into a fee agreement. This agreement included, inter alia, the following recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The agreement also purported to charge Randolph and her mother approximately \$3,500 as an initial retainer and required additional payments of \$2,000 each month throughout the duration of the representation. Despite the above "charged" fees, Randolph paid on November 18, 2011 only \$1,000 to Respondent, with the understanding that the balance of the fees were to

be paid by withdrawals on the 28th day of each month by Respondent's firm from Randolph's bank account.

On November 22, 2011, Respondent's firm sent a cease and desist letter to the lender.

On December 1, 2011, despite the letter from Respondent's office, the Randolph house was sold at a foreclosure sale.

On December 9, 2011, Randolph wrote a letter to Respondent's office, demanding the return of the \$1,000 she had paid. In addition, she asked that her file be forwarded to her new attorney.

On December 29, 2011, Respondent's accounting department allowed to be processed by the bank the monthly \$2,000 withdrawal from Randolph's account. When Randolph learned of this fact, she sent a protest to Respondent's office and challenged the withdrawal with her own bank. On January 18, 2012, the bank reversed the charge, thereby returning to Randolph the funds that had previously been paid to Respondent.

Not having received the original \$1,000, Randolph then filed a small claims action against Respondent.

Thereafter, in January 2012, Respondent's accounting department allowed to be processed by the bank another monthly \$2,000 withdrawal from Randolph's account. Randolph then arranged for her bank to stop payment on the attempted withdrawal.

When the small claims action was received by Respondent's office, Respondent became involved in the matter. He went to the scheduled hearing of the small claims matter and, unaware that the mistakenly withdrawn funds had already been returned by the bank to Randolph, refunded to her \$3,000, \$2,000 more than what she was out-of-pocket.

Count 20 - Section 6106 [Moral Turpitude]

In this count, the State Bar alleges that Respondent was guilty of an act of moral turpitude by withdrawing money from the bank account of Randolph, without her consent or knowledge, after Respondent's office had been terminated. This court agrees.

While the withdrawals resulted from the improper performance by Respondent's accounting department, rather than any act of dishonesty by Respondent himself, the withdrawals were done many weeks after Respondent's office had been terminated by Randolph and after Respondent should have made certain that no further withdrawals of funds would be effected by his office. Respondent was candid in his testimony regarding the ongoing problems that he encountered with the accounting department not being apprised of or responding appropriately to a client's decision to terminate an existing fee agreement. Here, Respondent's failure to affirmatively and personally take steps assuring that funds would not be improperly withdrawn from the bank account of Randolph, many weeks after the right to withdraw such funds had ended, constituted an act of gross negligence and a willful violation of section 6106.

Count 21 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

Respondent violated Civil Code section 2944.7, subdivision (a) by charging and collecting advanced fees from Randolph for home mortgage loan modification and other loan forbearance services before Respondent fully performed each and every service he contracted to perform. Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 22 - Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

In this count the State Bar alleges that Respondent willfully violated rule 3-700(D)(2) by his delay in not returning any portion of the fee that he had been paid in November 2011 until March 12, 2012, after a small claims lawsuit had been filed by his former client. This court agrees.

Count 23 - Rule 3-700(D)(1) [Failure to Release File]

Rule 3-700(D)(1) provides: “A member whose employment has ended shall: (1) Subject to any protective order or non-disclosure agreement, promptly release to the client, at the request of the client, all the client’s papers and property. ‘Client papers and property’ includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert’s reports, and other items reasonably necessary to the client’s representation, whether the client has paid for them or not [.]”

In this count the State Bar alleges that Respondent failed to release to Randolph or her mother their files and documents. However, Randolph, at trial, testified to the contrary.

This count is dismissed with prejudice.

Case No. 12-O-13014 (Hildens)

In 2011, Lynn and Susan Hilden (the Hildens) were trying to secure a modification of the existing mortgage on their property. They went to a loan modification company called ALG & Associates and were advised there that the best strategy for motivating the lender to agree to a loan modification was to stop making payments on the mortgage. The Hildens then stopped making their monthly payments. When ALG was not successful in securing a loan modification, ALG then suggested that the Hildens needed to file a lawsuit against the lender to motivate it to

agree to a loan modification (“the last practical option left to modify your loan”) and recommended Respondent’s law firm to represent the Hildens in that capacity.

In or about January 5, 2012, the Hildens hired Respondent and his law firm for litigation services, specifically to file and pursue a lawsuit against their lender. The fee agreement, misdated May 24, 2011, included, inter alia, the following recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The fee agreement provided for a “non-refundable” payment at the outset of the relationship of \$3,000, a second payment of \$3,000 the following month, and monthly payments of \$1,000 thereafter. The fee agreement contains a written disclosure that Respondent’s office would be paying ALG a referral fee of 50% of the initial fee.

Between approximately January 19 and February 8, 2012, inclusive, Respondent collected and received from the Hildens approximately \$6,000.

As part of the initial retainer documents, the Hildens authorized Respondent’s office to represent them with regard to the lender and “to access and discuss all information and documentation” for the mortgage.

On January 10, 2012, Respondent’s office sent a Cease and Desist letter to the lender, forwarding to the lender the above authorization.

On January 16, 2012, Respondent's firm sent the Hildens an email, notifying them, inter alia, of the identity of the individual assigned as a loan modification processor in their matter.

On the following day, this processor contacted the Hildens to request the documentation related to their finances in order to complete the loan modification process.

On or about February 8, 2012, Respondent requested certain financial information from the Hildens. On the same date, the Hildens received an email from the original loan modification processor that their matter was being transferred to the San Jose office.

On February 20, 2012, the Hildens met with Luis Camacho, then employed at Respondent's San Jose office. During this meeting, Camacho explained to the Hildens that they had no viable lawsuit against the lender and recommended that the best strategy was for them to pay the arrearages on their mortgage in order to get the loan reinstated.

The Hildens responded to this meeting by contacting the lender directly and successfully arranging for a proposed loan modification from the lender. This proposal was forwarded by the lender in a letter dated February 22, 2012. Having received the desired loan modification, the Hildens then terminated Respondent's representation of them and demanded a return of \$3,000.

Respondent's office initially promised to return the \$3,000, but by March 2, 2012, the refund had still not been paid.

On March 5, 2012, Mrs. Hilden received a telephone call from her bank, informing her that Respondent's office was seeking to withdraw \$1,000 from her bank account. Thereafter, Mrs. Hilden was advised by both an employee in Respondent's office and the Hildens' bank that Respondent's office was again seeking to withdraw \$1,000 from the Hildens' account. Although neither withdrawal was successfully effected by Respondent's office, the Hildens were advised

by their bank that they needed to close their account to eliminate the risk of further efforts, which the Hildens then did.

On April 20, 2012, Respondent sent a letter to the Hildens, enclosing an accounting and a check for \$1,350. Later it was determined that the refund had been incomplete, and on July 9, 2012, Respondent's office forwarded a check in the amount of \$1,368.50, for a total refund of \$2,718.50.

Count 24 – Section 6106 [Moral Turpitude]

In this count, the State Bar alleges that Respondent was guilty of an act of moral turpitude by seeking to withdraw money on two occasions from the Hildens' bank account, without their consent or knowledge, after Respondent's office had been terminated. This court agrees.

While the attempted withdrawals resulted from the improper performance by Respondent's accounting department, rather than any act of dishonesty by Respondent himself, the withdrawals were done many weeks after Respondent's office had been terminated by the Hildens and after Respondent should have made certain that no further withdrawals of funds would be effected by his office. Respondent was candid in his testimony regarding the ongoing problems that he encountered with the accounting department not being apprised of, or responding appropriately to, a client's decision to terminate an existing fee agreement. Here, Respondent's failure to affirmatively and personally take steps assuring that funds would not be improperly withdrawn from the bank account of the Hildens, many weeks after the right to withdraw such funds had ended, constituted an act of gross negligence and a willful violation of section 6106.

Count 25 - Rule 3-110(A) [Failure to Perform with Competence]

In this count the State Bar alleges that Respondent failed to act with competence by “not performing litigation services for or on behalf of the Hildens.” The evidence fails to provide clear and convincing evidence supporting this charge. Instead, the evidence is uncontradicted that Respondent’s office evaluated possible litigation against the lender while laying the foundation to go forward with a lawsuit, if it proved appropriate and necessary. However, on finding that such litigation was not appropriate, the office informed the Hildens of that fact and advised them on how best to proceed. The Hildens followed that advice and succeeded in securing a loan modification within two days.

The State Bar has provided no evidence that there was a meritorious lawsuit to file on the Hildens’ behalf. Nor has it provided any evidence that there would have been any better advice or outcome than what resulted from his office’s handling of the file. Under such circumstances, there is no basis, in law or in fact, for either the State Bar or this court to recommend that Respondent be disciplined for incompetence.

This count is dismissed with prejudice.

Count 26 - Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

As previously noted, the Hildens terminated Respondent’s office on or about February 22, 2012, and demanded a full refund of fees. Respondent did not return any of the unearned fees until April 20, 2012, and not all of the unearned fees until July 9, 2012. This conduct by Respondent constituted a willful failure to comply with rule 3-700(D)(2).

Count 27 - Rule 2-200(B) [Improper Financial Arrangement Among Lawyers]

Rule 2-200(B) provides, “Except as permitted in paragraph (A) of this rule or rule 2-300, a member shall not compensate, give, or promise anything of value to any lawyer for the purpose

of recommending or securing employment of the member or the member's law firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's law firm by a client. A member's offering of or giving a gift or gratuity to any lawyer who has made a recommendation resulting in the employment of the member or the member's law firm shall not of itself violate this rule, provided that the gift or gratuity was not offered in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.”

Subpart (A) of the rule provides, “A member shall not divide a fee for legal services with a lawyer who is not a partner of, associate of, or shareholder with the member unless: (1) the client has consented in writing thereto after a full disclosure has been made in writing that a division of fees will be made and the terms of such division; and (2) the total fee charged by all lawyers is not increased solely by reason of the provision for division of fees and is not unconscionable as that term is defined in rule 4-200.”

The State Bar alleges that Respondent’s sharing of 50% of the initial monthly fee constituted a violation of 2-200(B). However, in alleging that violation, the State Bar fails to note the exception of subpart (A). Respondent complied with that subpart.

This count is dismissed with prejudice.

Count 28 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Fee]

Respondent violated Civil Code section 2944.7, subdivision (a) by charging and collecting advanced fees from the Hildens for home mortgage loan modification and other loan forbearance services before Respondent fully performed each and every service he contracted to perform. Respondent’s violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By

entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Case No. 12-O-13059 (Davidson)

In this case, consisting of a single count, the State Bar alleged, and Respondent stipulated at trial, that on three occasions in early 2012, he had transmitted by mail to Danielle Davidson flyers offering his legal services, including litigation against lenders and loan modification services; that he did not have a family or prior professional relationship with her; that none of the flyers bore the word “advertisement,” “newsletter,” or words of similar import; and that none of the flyers otherwise included any statements informing the recipient that the mailings were advertisements or newsletters.

Count 29 - Rule 1-400(D) [Improper Solicitation]

The State Bar alleges, Respondent stipulated at trial, and this court finds that Respondent’s conduct, as described above, constituted a willful violation by him of the prohibition of rule 1-400(D) against improper solicitation.

SECOND NOTICE OF DISCIPLINARY CHARGES

Case No. 13-O-12284 (Bankruptcy Cases)

RIn 2011 and 2012, Respondent and his law firm filed personal bankruptcy petitions for clients and represented the clients throughout the ensuing bankruptcy proceedings. The bankruptcy matters included the following:

In re: Sheri Moody, case No. 8:10-bk-20800

In re: Ceasareo Aragon and Gabriela Acevedo, case No. 6:11-bk-30745

In re Philip J. Kajszo, case No. 8:11-bk-27467

In re Lupe Ruiz, case No. 6:12-bk-10326-WJ

In re Carniceria Perez, case No. 6:11-bk-48851-WJ

In re Hugo and Gladis Salazar, case No. 2:10-bk-41130-VZ¹⁰

A review of bankruptcy cases filed by Respondent's office during the period 2010 through 2012 reveals a high number of repeated violations of the rules governing bankruptcy practice.

Most of the listed cases were initiated by petitions filed under chapter 11 of the bankruptcy laws. In chapter 11 cases, an attorney, within 14 days of the filing of the petition, "shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation." (11 U.S.C. § 329; Fed. Rules Bank. Proc., rule 2016.) Respondent frequently failed to comply with this obligation and did not disclose the compensation that had been received prior to allowing the case to be dismissed. On other occasions, he did not disclose all of the compensation he had received during the prior year, but instead unilaterally allocated only a portion of the expected fee to the bankruptcy proceeding itself and improperly treated the remaining portion of the fee under the fee agreement as "not rendered in contemplation of or in connection with" the bankruptcy. (Cf. *Conrad, Rubin & Lesser v. Pender* (1933), 289 U.S. 472, 478-79; *In re A.W. Logging, Inc.* (Bankr. D. Idaho 2006) 356 B.R. 506, 512-513 [fees incurred in seeking to avoid bankruptcy must be disclosed].)

¹⁰ In the NDC, the State Bar also alleged misconduct in the case of *In re: Sung Ja Kim*, Case No. 2:11bk-56543. However, at trial those allegations were dismissed.

In addition, in chapter 11 cases, the attorney may only receive compensation for the work done on behalf of the debtor if the attorney applies for and obtains appointment by the bankruptcy court. It is well-settled that approval of the bankruptcy court for the employment of a professional for a debtor in possession is a prerequisite to the payment of fees. (*Atkins v. Wain, Samuel & Co.* (9th Cir. 1995) 69 F.3d 970, 973.) 11 United States Code section 327(a) provides that “[t]he trustee ... with the court’s approval, may employ one or more attorneys ... that do not hold or present an interest adverse to the estate, and that are disinterested persons” This requirement is made applicable to debtors in possession, such as Respondent’s clients who were seeking to avoid foreclosure on their houses, through 11 U.S.C. sections 1101(1) and 1107(a). (See also *Atkins v. Wain, Samuel & Co.*, *supra*, 69 F.3d at p. 973, fn. 2.). As stated by the Ninth Circuit Court of Appeals in the *Atkins* decision, “[P]rofessionals who perform services for a debtor in possession cannot recover fees for services rendered to the estate unless those services have been previously authorized by a court order.” (69 F.3d at p. 973.)

Despite this well-settled rule, Respondent would file the bankruptcy action and never seek approval for his appointment or fees prior to allowing the case to be dismissed.

Ultimately the office of the U.S. Trustee and the bankruptcy courts became aware and concerned by Respondent’s practices. On many occasions, the courts ordered Respondent to disgorge all of the fees he had received due to his lack of compliance with the above procedures. The U.S. Trustee’s office eventually took steps to require Respondent to comply retroactively with the above requirements in all of the chapter 11 cases that he had on file.

Respondent’s disgorgement problems in bankruptcy cases were not limited to chapter 11 cases. On August 3, 2010, Respondent filed a chapter 13 petition on behalf of Sheri Moody. Respondent was identified personally as the counsel of record in the petition. When Respondent

was hired by Moody to help her seek to save her house, she entered into a fee agreement with Respondent on July 19, 2010. This fee agreement listed the services to be provided and included “Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation” in the same manner as quoted in several of the cases described above. The fee set forth in the agreement totaled \$10,500 and required the payment of advanced fees.

At the time that Respondent filed the chapter 13 petition on Moody’s behalf, he was obligated to disclose the entire \$10,500 fee agreement. Instead of disclosing the entire agreement, his papers indicated that Moody had agreed to pay only \$3,000. This figure would put the compensation within the “no look” approved compensation level of the Rights and Responsibilities Agreement in Chapter 13 cases.

Moody eventually complained to the bankruptcy trustee about Respondent’s handling of her matter and the trustee brought an action to require Respondent to disgorge all of his fees. Respondent was ordered to file a declaration in response to the motion and did so on March 7, 2011. However, because he failed to do so by the designated deadline, it was stricken by the court. In this declaration he described Moody as a “difficult client from the outset” but acknowledged that “I continued to represent Moody in the Chapter 13 despite her increasing [sic] hostile attitude.”

On June 30, 2011, the court entered an order requiring Respondent to disgorge all of the funds that he had already received pursuant to the fee agreement and to return to Moody all of the remaining uncashed and post-dated checks. In making that order, the court concluded that all of the work contemplated by the fee agreement fell within the court’s jurisdiction to consider and order disgorged; that Respondent’s handling of the bankruptcy petition was “tantamount to gross negligence”; that Respondent had failed to adequately supervise the attorneys he had working on

the matter, as reflected in his allowing an ineligible attorney to appear as Moody's attorney in the matter; and, most significantly, that Respondent's fee agreement violated the Civil Code prohibition of section 2944.7(a)(1) against charging or collecting fees before the attorney had "fully performed each and every service the person contracted to perform or represented that he or she would perform." (Ex. 388, p. 265-266.) Despite this ruling from the court, Respondent continued to collect fees in other matters under comparable fee agreements.

Count 1 – Section 6106 [Moral Turpitude]

Under section 6106, "The commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension." For purposes of State Bar disciplinary proceedings, moral turpitude is "any crime or misconduct reflecting dishonesty, particularly when committed in the course of practice" (*Read v. State Bar* (1991) 53 Cal.3d 394, 412.)

Acts of moral turpitude include omissions, concealment and affirmative misrepresentations. (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315.) "No distinction can . . . be drawn among concealment, half-truth, and false statement of fact." (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174.)

Respondent violated section 6106 by failing to disclose and concealing in bankruptcy proceedings the true amount of the fees he had charged and received from the debtor. The court, the U.S. Trustee, and the creditors were entitled to know that information, both that the court could assess the reasonableness (and legality) of the fees and so that inappropriate fees might be available to both the debtor and the creditors to extinguish other obligations.

Respondent's statements, that the mistakes were made by others and not by him, are unavailing and lack credibility. These petitions were filed under Respondent's name as counsel

of record. They were being handled by individuals hired as independent contractors, who are required by law to be working under the direction and control of Respondent, their principal. Respondent was well aware by early 2011, if not long before, that the individuals handling the bankruptcy cases were mishandling the files. Indeed, he described the department during his testimony at trial as “controlled chaos” and complained that he couldn’t get people to do what he wanted. Nonetheless, he continued to send out flyers for more work, knowing that it would result in more bankruptcy cases and he continued to allow the mishandling to continue.

Respondent’s conduct in these matters represented a willful violation of the prohibitions of section 6106.

Count 2 – Section 6068, subd. (a) [Failure to Comply with Bankruptcy Laws]

As discussed above, Respondent allowed bankruptcy petitions filed by him as counsel of record to be mishandled. Whether these acts were the result of hands-on mishandling by Respondent or a continuing failure by him to adequately supervise the work being done on the cases, it represents a reckless and repeated failure by him to comply with the bankruptcy laws, in willful violation of section 6068, subdivision (a).¹¹

Case No. 11-O-14497 (Shin)

Jeff Shin (Shin) is a Korean businessman, educated in management school in Korea. He had lived and worked in the United States since 1993. In 2011, he owned and operated several companies.

¹¹ However, the conduct underlying this violation is generally essentially the same as that underlying the finding, above, that Respondent is culpable of the more serious misconduct of committing acts of moral turpitude in wilful violation of section 6106. Accordingly, the court finds no need to assess any additional discipline as a consequence of it. (See *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.)

One of Shin's companies was USB Group, Inc., doing business as Alpha Sewing Machine (USB). USB sold and repaired industrial sewing machines. In February 2011, First Bank had filed a lawsuit against USB and Shin, alleging, inter alia, breaches of loan and security agreements. The complaint alleged an unpaid balance of \$230,000 on a commercial loan and additionally sought interest at 13.5% and possession of the assets of USB. Shin was sued personally in the lawsuit based on the allegation that he had personally guaranteed the debt. Shin and his company were, in fact, in default on the loan.

Another company owned by Shin was Union Trim. Union Trim sold fabric trims. In October 2009, a lawsuit was filed in the Los Angeles County Superior Court against Shin, alleging that Shin had delivered to the plaintiff only three of five sewing machines for which the plaintiff had paid \$81,390 (Soon Trim lawsuit). The plaintiff was seeking a refund of \$31,000 and other contract damages. Shin's prior attorney in the matter had withdrawn in July 2010.

On March 3 and 4, 2011, Shin consulted with Respondent about the two lawsuits. At that time, the Soon Trim matter was set to commence trial just a few days later, on March 7, 2011. In the First Bank suit against USB, a hearing was set for March 25, 2011, just three weeks later, on the bank's application for a Writ of Possession to seize the collateral for the loan, including USB's business assets and inventories.

In meetings with Respondent, aided by a Korean-speaking paralegal in Respondent's office, Shin acknowledged that he was in default on the First Nation/USB loan, indicated that he did not have the money to pay an attorney to handle the scheduled jury trial, and expressed a desire to get the two matters settled. He did not have the funds available to do so.

After having a litigation attorney in his office investigate the lawsuits briefly, Respondent met with Shin and recommended that Shin file a bankruptcy. Respondent then had Shin meet

with a bankruptcy attorney in his office, who determined that three separate bankruptcies were required, one for Shin, one for USB, and one for Union Trim. The plan was to use the bankruptcies to buy enough time to find a lender who would provide sufficient funds to get the cases settled. Shin agreed to the filing of the bankruptcies and signed documents authorizing Respondent's office to go forward. Shin also signed a fee agreement with Respondent's office, specifically noting the fact that bankruptcy services were contemplated.

On March 4, 2011, Respondent's office filed the three bankruptcies. Because the petitions did not include all of the required schedules, an order was immediately issued by the court that the schedules were required or the petitions would be dismissed. At the same time, notices of bankruptcy stays were issued and served on the two creditors.

Respondent then sought to use the bankruptcy as leverage in negotiating with First Bank a reduction of the indebtedness and a release of Shin as a guarantor, but received in response only rejection and indignation. There were also efforts made, albeit unsuccessful, to seek an outside source of funds to settle the cases.

The unexpected development was that the U.S. Trustee, on the filing of the USB petition, demanded that the company cease all business operations immediately. While this demand was first communicated in the form of a request, it became the focus of a formal written demand to Respondent on March 17, 2011. While Respondent had not believed that the trustee would require that all business activities be discontinued, when he learned on March 17, 2011, that the trustee was insistent on compliance, he assured the trustee's representative that USB would comply. On the following day, March 18, 2011, a representative of the trustee physically appeared at the USB facility to determine whether operations had been discontinued. On

discovering that operations were continuing, the trustee's office forced operations to stop, padlocked the facility, and hired security to guard the premises.

When Shin learned that his operations had been shut down as a result of the bankruptcy, he was both concerned and upset. In discussions with Respondent and in subsequent efforts for the next 10 days, they sought unsuccessfully to identify a source of money to solve the situation. On May 18, 2011, Respondent filed a motion to convert the USB bankruptcy from a chapter 7 to a chapter 11 proceeding.

On March 29, 2011, Shin terminated Respondent, demanded that he turn over the files, refund all fees, and sign a substitution of attorneys (substituting Shin as in pro per representative of the debtors). The files were returned to Shin by Respondent, who also agreed to and did refund \$6,000 to Shin. In making this refund, Respondent and Shin agreed that the remaining \$2,000 would be retained by Respondent to cover the various filing fees his office had incurred in filing the three bankruptcies and related motions.

Thereafter, Shin hired another attorney and sought to file an emergency motion to have the USB bankruptcy converted to a chapter 11 proceeding. In that effort, Shin sought to disclaim having any knowledge that any bankruptcy action was going to be filed by Respondent's office. That motion was subsequently denied by the court.

Count 3 – Section 6106 [Moral Turpitude - Fraudulent Bankruptcy Filing]

In this count the State Bar alleges that Respondent filed the bankruptcy petition without any authorization or knowledge of Shin and that his actions in doing so were acts of moral turpitude, in violation of section 6106.

The evidence fails to provide clear and convincing proof of this charge. The charge is completely dependent on the testimony of Shin, who lacked both candor and credibility at trial.

His claims of being ignorant about what was going on were belied by his signatures on the many bankruptcy documents, his acknowledgement that he was routinely in Respondent's office to discuss the status of his case, his agreement that he was discussing the case with the firm's bankruptcy attorney, and the testimony of both Respondent and the Korean-speaking paralegal regarding Shin's conversations with both Respondent and the bankruptcy attorney in Respondent's office. In addition, Shin offered no alternative explanation as to why the jury trial on March 7, 2011 had not gone forward as scheduled.

This count is dismissed with prejudice.

Count 4 – Rule 4-100(B)(3) Failure to Render Accounts of Client Funds]

In this count the State Bar alleges that Respondent did not provide an accounting to Shin of the fees that he had collected and received from Shin.

The evidence fails to provide clear and convincing proof of this charge. At the time that Shin met with Respondent and terminated him, Respondent provided an oral accounting of the funds that had been received, the work that had been done, and the out of pocket costs that had been incurred and paid. The parties then agreed that Respondent would refund \$6,000 of the fees that had been paid by Shin and retain the remaining \$2,000.

This count is dismissed with prejudice.

Count 5 – Section 6068, subd. (m) [Failure to Inform Client of Significant Development]

In this count the State Bar alleges that Respondent violated section 6068, subdivision (m) by failing to inform Shin that he had filed bankruptcy petitions, that Shin was required to cease business operation, and/or of the "bankruptcy trustees emails and demands."

The evidence fails to provide clear and convincing proof of this charge. Respondent and the Korean-speaking paralegal testified credibly that Shin was in Respondent's office on a near-

daily basis and that he was kept informed of the filing and subsequent status of the bankruptcy matters. As noted above, Shin's efforts to disclaim any knowledge of the bankruptcy proceedings lack credibility and condor.

This count is dismissed with prejudice.

Case No. 12-O-15738 (Smith)

Donald Smith is a retired doctor, living in Northern California. In 2011, he owned a house in Los Angeles, occupied by his daughter. When he got behind in the mortgage payments, the lender eventually succeeded in having the property sold at foreclosure.

On or about October 6, 2011, Donald Smith hired Respondent's law firm to seek to set aside the foreclosure sale and, after doing that, to negotiate a loan modification of the prior mortgage. In doing so, he met with an attorney in Respondent's San Jose office. On that day, Smith and Respondent's firm entered into a written fee agreement. The agreement was signed by attorney Bruce Janke. The agreement contained the following language:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

With respect to the fees to be received by Respondent for his services, the fee agreement provided for an immediate payment of \$3,000 and monthly payments of \$1,300 thereafter until the "case is completed." "Case completion" was defined in the agreement to be:

1. Either the client loses possession of said property and evicted.

2. Or, Client must resume paying Lender or any monthly mortgage payments pursuant to a permanent loan modification of the subsequent mortgage.
3. Or, Client must resume paying rent to third party purchaser of said property.

On October 6, 2011, Respondent's office collected \$3,000 from Smith. In addition, the office made arrangements for it to be able to make monthly withdrawals of \$1,300 from Smith's bank account.

After Smith had agreed to hire Respondent's office, the file was then transferred to Los Angeles for handling, since the subject property was located there.

Three weeks later, on October 24, 2011, Bruce Janke, the attorney in Respondent's office who had signed the fee agreement, emailed the Los Angeles office to say that he could not tell whether the case had even been assigned to an attorney there.

On October 29, 2011, Smith sent a letter to Respondent's office in San Jose, terminating the contract and asking for a full refund of fees.

On November 4, 2011, Respondent's office in Los Angeles prepared a release of liability letter to send to Smith for signature.

Although Respondent's office had already received notice that it had been terminated by Smith, on November 8, 2011, the office electronically withdrew \$1,300, from Smith's bank account. A month later, on December 8, 2011, the office electronically withdrew another \$1,300, from Smith's bank account.

On June 14, 2012, not having received a refund from Respondent, Smith filed a small claims action in San Jose. Respondent's office, represented by an attorney in the office, initially

tried to have the matter dismissed or transferred to Los Angeles by a letter dated July 11, 2012. While the letter contained an accounting, and claimed that only a \$400 refund was owed, the accounting did not disclose the additional \$2,600 of withdrawals that had previously been made. This misinformation was repeated by the same attorney in a letter to the court, complaining that Smith had refused to accept a check for \$400 to resolve the dispute.

When the effort to avoid the San Jose small claims court proceeding proved unsuccessful, Respondent appeared personally for the hearing on December 11, 2012, and offered to refund the \$5,600, but only if the refund resolved the dispute. Smith did not agree. At the completion of the small claims court hearing, the judge awarded a judgment of \$5,880 in Smith's favor.

To date, Respondent has failed to refund any portion of the fee he received. Because he filed for bankruptcy, a proceeding that is still pending, he claims that he is now precluded from refunding the fee to Smith as an individual creditor.

Count 6 – Section 6106 [Moral Turpitude – Unauthorized Withdrawals of Funds]

In this count, the State Bar alleges that Respondent was guilty of an act of moral turpitude by withdrawing \$2,600 from the bank account of Smith, without his consent or knowledge and after Respondent's office had been terminated. This court agrees.

While the withdrawals resulted from the improper performance by Respondent's accounting department, rather than any act of dishonesty by Respondent himself, the withdrawals were done many weeks after Respondent's office had been terminated by Smith and after Respondent should have made certain that no further withdrawals of funds would be effected by his office. Respondent was candid in his testimony regarding the ongoing problems that he encountered with the accounting department not being apprised of, or responding appropriately to, a client's decision to terminate an existing fee agreement. Here, Respondent's failure to

affirmatively and personally take steps assuring that funds would not be improperly withdrawn from the bank account of Smith, many weeks after the right to withdraw such funds had ended, constituted an act of gross negligence and a willful violation of section 6106.

Count 7 – Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of Smith. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent's retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7.

Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 8 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

The State Bar alleges in the NDC, Respondent stipulated at trial, and this court finds that Respondent's failure to refund the money promptly after Smith's demand letter of October 29, 2011, constituted a willful violation by him of rule 3-700(D)(2).

Count 9 – Section 6068, subd. (d) [Seeking to Mislead a Judge]

Section 6068, subdivision (d), makes it a duty of an attorney never to seek to mislead a judge by an artifice or false statement of fact or law.

In this count the State Bar alleges that Respondent defended the action by claiming that he had earned all of the money that had been received and, in doing so, concealed the fact that the additional \$2,600 had been withdrawn from Smith's account.

The evidence fails to provide clear and convincing proof of this charge. There is no evidence that Respondent personally made any misrepresentation to the small claims court or failed to disclose the additional \$2,600 at the hearing. To the extent that another attorney failed to disclose those payments to the court in his July 2012 letters, there is no evidence that the attorney (or Respondent) was aware of the additional fees at the time. In that regard, the court notes that Smith only amended his complaint in the action to seek recovery of more than \$3,000 in fees on July 30, 2012, several weeks after the attorney's last letter to the court.

This count is dismissed with prejudice.

Case No. 12-O-16063 (Changs)

On October 11, 2010, Yohann Chang and his wife, Jung Ok Chang (the Changs) hired Respondent and his law firm for home mortgage loan modification services and other loan forbearance services, including debt settlement and obtaining a temporary restraining order to stop foreclosure. On that day, the Changs and Respondent's firm entered into a written fee agreement. The agreement contained the following language recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The fee agreement provided for payment of an immediate of fee and ongoing subsequent payments of fees while services were continuing. On or about October 11, 2010, Respondent collected and received \$3,000 from the Changs. Between November 2010 and April 2011, inclusive, Respondent collected and received from the Changs additional fees, in monthly installments, in the amount of \$11,000.

On or about October 21, 2010, Respondent sent to the Changs' lender several letters: a letter of representation, a letter requesting certain information and documents, and a cease and desist letter.

In May 2012, Respondent filed a civil lawsuit on behalf of the Changs against their lender. On July 20, 2012, the lender filed a demurrer.

On August 9, 2012, Respondent filed an amended complaint against the Changs' lender.

On or about August 10, 2012, Respondent sent a letter to the Changs, withdrawing from employment as the Changs' attorney, effective immediately. The letter indicated that Respondent's office had made arrangements for the Changs' matter to be transferred to another law firm and that the existing fee agreement would be honored by that firm. The letter indicated that the Changs needed only to agree to the transition to the new firm.

The Changs did not agree to the new law firm that had been recommended by Respondent. Instead, at some point before September 6, 2012, they hired their own attorney. (Ex. 205.) On that date, Respondent's office sent the Yohann Chang an email, confirming that he "had stated that your current wrongful foreclosure suit was to not be further continued at this point in time." (Ex. 205.) Chang forwarded the email to his new attorney, asking the new attorney to talk with Respondent's office. The focus of Chang's request, however, was not on

the issue of whether the lawsuit should no longer be pursued, but rather on whether the Changs might continue to be billed.

On or about September 13, 2012, the lender filed a demurrer to the amended lawsuit. Jung Chang testified that she was aware of the demurrer.

On September 29, 2012, the Changs' new attorney, Young Ryu, sent Respondent a letter, informing him that he was the Changs' new attorney. The letter referenced the State Bar case number and was copied to a State Bar investigator.

On October 1, 2012, because Chang was neither communicating with Respondent nor continuing to pay his fees, Respondent filed a motion to be relieved as the Changs' attorney, asserting a breakdown in the attorney-client relationship was caused by the Changs' failure to cooperate or communicate with Respondent. Notice of the motion was mailed to the Changs. No opposition to the motion having been filed, the motion was granted on November 2, 2012.

Thereafter, the Changs' new attorney did not oppose the motion to withdraw or file an opposition to the pending demurrer (consistent with the Changs' instruction to Respondent's office to discontinue pursuit of the action). Consequently, the defendants' demurrer was sustained and the lawsuit subsequently dismissed.

Count 10 – Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of the Changs. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent's retention and required that both an advance payment and ongoing payments be made. This fee agreement violated section 2944.7.

Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 11 – Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

The State Bar alleges in the NDC, Respondent stipulated at trial, and this court finds that Respondent did not provide the Changs with an accounting and that his failure to do so constituted a willful violation of rule 4-100(B)(3).

Count 12 – Rule 3-700(D)(1) [Failure to Release File]

The State Bar alleges in the NDC, Respondent stipulated at trial, and this court finds that Respondent did not provide the Changs with their client file and documents at their request and that this failure constituted a willful violation of rule 3-700(D)(1).

Count 13 – Section 6068, subd. (m) [Failure to Inform Client of Significant Development]

In this count the State Bar alleges that Respondent violated his duty to notify his clients of significant developments by “not informing the Changs that their lender had initiated foreclosure proceedings against their property in November 2011, by not informing the Changs of the foreclosure sale date on March 5, 2012, by not informing the Changs that an unlawful detainer case had been filed against them, and by not informing the Changs of the lawsuit he filed against their lender on May 17, 2012, and the demurrer to the lawsuit.”

The evidence fails to provide clear and convincing proof of this charge.

The evidence is uncontradicted that Respondent's office did not know of the foreclosure proceedings or foreclosure sale until the Changs received notice of the eviction proceeding. That is the basis for the lawsuit against the parties responsible for the foreclosure.

The balance of the allegations are contrary to the State Bar's own exhibits and the testimony at trial of Jung Chang, who acknowledged being told and aware of each of these developments in the case.

This count is dismissed with prejudice.

Count 14 - Section 6068, subd. (m) [Failure to Inform Client of Significant Development]

Section 6068, subdivision (m), of the Business and Professions Code obligates an attorney to "respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services."

In this count the State Bar alleges that Respondent's office failed to respond to any of the Changs' requests for a status report "between October 2010 and August 2012."

The evidence fails to provide clear and convincing proof of this charge. The allegations are unsupported by and contrary to the testimony and documentary evidence at trial.

This count is dismissed with prejudice.

Count 15 – Rule 3-700(A)(2) [Improper Withdrawal from Employment]

Rule 3-700(A)(2) provides, "A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules."

In this count the State Bar alleges that Respondent withdrew from the representation of the Changs "without due notice to the Changs and without allowing them time for employment of other counsel, and by filing a motion to be relieved as their attorney in a pending lawsuit without informing the Changs of the motion."

As set forth in detail above, this count is without support in the facts.

Accordingly, the count is dismissed with prejudice.

Case No. 12-O-16064 (Mariscal)

On or about February 2, 2012, Maria Mariscal (Mariscal) hired Respondent and his law firm for home mortgage loan modification services and other loan forbearance services, including debt settlement and obtaining a temporary restraining order to stop foreclosure.¹² On that day, Mariscal and Respondent's firm entered into a written fee agreement. The agreement contained the following language recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The fee agreement provided for payment of an immediate fee and subsequent ongoing payments of fees while services were continuing. On or about February 7, 2012, Mariscal paid Respondent \$3,500. Between March and July 2012, Respondent collected and received from Mariscal monthly installments of additional fees of \$8,500.

On or about May 22, 2012, Mariscal's lender sent written correspondence to Respondent, acknowledging its receipt of a package of materials received from Respondent's office as part of a requested loan modification but requesting certain additional documents to complete Mariscal's loan modification application package. Mariscal was asked by Respondent's office to provide the additional documents. There is no evidence that she did.

¹² Mariscal had previously retained another law firm to secure a loan modification for her but that effort proved unsuccessful when the requested modification was denied.

On June 7, 2012, slightly more than two weeks after the date on the above May 22 letter, the lender sent a letter declining to offer a loan modification because all of the requested documents had not been received within the 15 day deadline contained in the prior letter. The lender then scheduled a foreclosure sale for June 25, 2012.

On July 12, 2012, Respondent and his law firm filed a lawsuit against the lender on behalf of Mariscal. In the interim, Respondent's office had succeeded in getting the foreclosure date postponed to August 30, 2012.

On August 17, 2012, Mariscal notified Respondent's office that she was terminating her relationship with it. On that same day, Respondent wrote a termination letter to Mariscal in which he confirmed the fact that his office had been terminated, effective immediately, and would no longer be representing her in the lawsuit against the lender. As part of this letter, he included the fact that the foreclosure sale was scheduled for August 30, 2012.

Also on August 17, 2012, Mariscal signed a substitution of attorney form, in which she replaced Respondent as counsel in the case and would be henceforth representing herself. During her testimony in the instant proceeding, Mariscal testified that she understood that Respondent was no longer representing her as of that date, noting: "He wasn't responsible for anything that happens to my case."

The substitution of attorney form was filed with the court on August 20, 2012. It is not clear that Mariscal served a copy of the substitution on counsel for the other parties.

On October 6, 2012, the lender filed a demurrer. The proof of service indicated that Mariscal was not served with the motion. Instead, it was mailed to Respondent's office. A hearing on the demurrer was set for November 8, 2012.

On October 19, 2012, because the court's docket did not record the substitution of attorney, Respondent filed a motion to be relieved as counsel in Mariscal's lawsuit. Hearing on the motion was scheduled on October 25, 2012. The motion did not list the address of Mariscal in the blank where that information was required.

On November 6, 2012, Respondent filed a second motion to be relieved as counsel in Mariscal's lawsuit. While the motion did not list the address of Mariscal in the blank where that information was required, the attached proof of service indicated that it was mailed to her. At trial Mariscal acknowledged receiving a motion to withdraw in the mail.

The hearing of the motion was scheduled for December 7, 2012. Respondent supported his motion with his declaration, under penalty of perjury, that included a statement that Mariscal had terminated Respondent's services in the case, had changed her phone number, and had been "unresponsive to all attempts to voluntarily terminate representation." On the same date, Respondent appeared as counsel for Mariscal at a case management conference in the case and had the conference continued to a later date.

On November 8, 2012, the court granted Respondent's motion to be relieved as Mariscal's counsel, effective upon submitting proof of service of the order upon Mariscal. On that same date, the court sustained the demurrer filed by the lender, without leave to amend. In addition the court issued an OSC as to why the entire action should not be dismissed. Respondent was ordered to provide notice of the OSC to all parties, including Mariscal,

Count 16 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of Mariscal. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed

within Respondent's retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7.

Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 17- Rule 3-110(A) [Failure to Perform with Competence]

In this count the State Bar alleges that Respondent failed to act with competence "by not submitting any of the documents requested by the lender to complete Mariscal's loan modification application package, resulting in the lender's closing of the application."

The evidence fails to provide clear and convincing proof of this charge. When the request for additional information was received by Respondent's office, Mariscal acknowledged during her testimony at trial that she was contacted by Respondent's office and asked to provide the requested materials. There is no evidence that she ever did.

A law firm can only ask the client to cooperate in providing the documents necessary to securing a loan modification for that client. It cannot force the client to do so. When the client's failure to do what the attorney has requested results in the client's lender denying the requested loan modification, that denial is chargeable only to the client, not to any reckless, intentional or repeated incompetence by the attorney.

This count is dismissed with prejudice.

Count 18 - Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

At trial, the State Bar asked that this count be dismissed. At that time the count was dismissed by the court with prejudice.

Count 19 - Rule 3-700(D)(1) [Failure to Release File]

In this count, the State Bar alleges that Respondent failed to provide Mariscal with her file and client documents, in violation of rule 3-700(D)(2).

The evidence fails to provide clear and convincing proof of this charge. At trial, Mariscal testified that she had received the file materials from Respondent's office. She just did not know if she had received it all. There was no evidence that she had not. Her statement that she could not remember receiving legal paperwork lacked credibility and was unpersuasive.

This count is dismissed with prejudice.

Count 20 - Section 6068, subd. (m) [Failure to Inform Client of Significant Development]

In this count the State Bar alleges that Respondent failed to inform Mariscal of various developments in her matter, including the May 22, 2012 letter from the lender, the need for additional documents, the closing of her loan application, and various events after Respondent had been terminated as her attorney.

The evidence fails to provide clear and convincing proof of this charge. As set forth above, Mariscal acknowledged receiving information from Respondent's office on all of the developments occurring prior to her termination of him. She was also aware of his motion to be relieved as her counsel. There was no persuasive evidence that she was unaware of the order granting Respondent's motion to be relieved or of the OSC re dismissal.

The State Bar's allegation, that Respondent failed to notify Mariscal that he did not file the substitution of counsel, is made quizzical by the fact that the substitution marked by the State

Bar as its Exhibit 226 bears a “Filed” stamp, with a date of August 20, 2012, made by the Los Angeles County Superior Court.

This count is dismissed with prejudice.

Case No. 12-O-16018 (Smiser)

On September 22, 2011, Victoria Smiser (Smiser) entered into a written fee agreement to hire Respondent and his law firm for home mortgage loan modification services and other loan forbearance services, including litigation, debt counseling and negotiations. The fee agreement, dated September 22, 2011, included, inter alia, the following recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The fee agreement provided for an immediate payment of a non-refundable \$4,000 and subsequent monthly payments of \$2,000 thereafter. On September 22, 2011, Respondent collected and received from Smiser \$4,000. On September 22, 2011, Respondent also received from Smiser twelve post-dated checks, each in the amount of \$2,000. Between October 2011 and June 2012, Respondent deposited nine of those checks, thereby receiving from Smiser additional fees in the amount of \$18,000.

In a Scope of Service addendum to the fee agreement, it was stated, “We will prepare and file a Lawsuit in Superior Court for Temporary Restraining Order. We will also seek a

Preliminary Injunction.” Also contained in this addendum was a statement that, “There is NO FEE for Loan Modification Services.”

On September 23, 2011, Respondent sent by certified mail a cease and desist letter to Smiser’s lender. On September 29, 2011, Respondent’s office faxed the same letter to the lender. In the letter, Respondent made certain requests and demands for information and discovery.

On October 31, 2011, the lender acknowledged receiving Respondent’s correspondence on September 26, 2011, and on September 29, 2011. With regard to the faxed copy of the letter, however, the lender stated that the copy received by it was illegible and returned a copy of what it had received. It was truly illegible. In the balance of the lender’s October 31, 2011 letter, the response makes clear that it had received the mailed copy of the September 23 letter and was responding to it. With this letter, the lender provided documentation requested by Respondent’s office in the September 23, 2011 letter.

Between Respondent’s receipt of the October 31, 2011 letter and July 2012, there is no evidence of any significant activity by Respondent’s office on Smiser’s behalf, other than sending a follow-up copy of the September 23, 2011 letter to the lender and purchasing certain recorded documents. At the same time, there is also no evidence of any effort by Smiser’s lender to pursue any foreclosure action against her property.

After Smiser had signed up with Respondent’s office, she heard nothing further from it. When she would occasionally call and ask for the name of the attorney handling her file and a report on its status, she was told by the person answering the phone that someone would call her back. No one ever did. In mid-July 2012, having previously received a circular describing Respondent’s San Jose office, Smiser called that office and talked with Luis Camacho, the

manager of that office. This was apparently the first contact she had with an attorney at the firm after signing the fee agreement in September 2011.

At the time of this phone call in July 2012, a deal was in the works between Respondent and Camacho whereby Camacho would open his own office and take over Respondent's Northern California clients. When Camacho talked with Smiser about her matter with Respondent's office, Camacho told her he knew nothing about her file, which was then being handled in Los Angeles, and that she should talk with a particular attorney at the Department of Justice. When Smiser contacted that attorney, he advised her to terminate the relationship with Respondent and contact the State Bar. Smiser then notified Respondent's San Jose office that she was terminating the relationship. This was confirmed by a letter from Respondent's San Jose office, authored by Camacho on July 12, 2012.

After notifying Respondent's office of her decision to terminate the relationship, Smiser subsequently talked with "Nancy," then a member of Respondent's accounting department. Smiser told Nancy of the termination and directed that none of the remaining post-dated checks be deposited. Despite this directive, on or about July 15, 2012, Respondent deposited Smiser's \$2,000 check, post-dated July 15, 2012.

On July 19, 2012 and August 6, 2012, Smiser sent written demands that the \$2,000 be re-deposited into her account. It never was.

**Count 21 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) -
Illegal Advanced Fee]**

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of Smiser. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within

Respondent's retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7.

Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 22 - Section 6106 [Moral Turpitude - Unauthorized Withdrawals of Funds]

In this count, the State Bar alleges that Respondent was guilty of an act of moral turpitude by withdrawing funds from the bank account of Smiser, without her consent or knowledge, contrary to her express directive to Respondent's office, and after Respondent's office had been terminated. This court agrees.

While the withdrawal resulted from the improper performance by Respondent's accounting department, rather than any act of dishonesty by Respondent himself, the withdrawal was done after Respondent's office had been terminated by Smiser, after Smiser had contacted the accounting department herself to notify it of the termination and to direct that the checks not be deposited, and after Respondent should have made certain that so further withdrawals of funds would be effected by his office. Respondent was candid in his testimony regarding the ongoing problems that he encountered with the accounting department not being apprised of, or responding appropriately to, a client's decision to terminate an existing fee agreement. Here, Respondent's failure to affirmatively and personally take steps assuring that funds would not be improperly be withdrawn from the bank account of Smiser, many weeks after the right to

withdraw such funds had ended, constituted an act of gross negligence and a willful violation of section 6106.

Count 23 - Rule 3-110(A) [Failure to Perform with Competence]

In this count the State Bar alleges that Respondent failed to act with competence by not filing a lawsuit, by not taking any action to obtain a restraining order, and by not performing any services of value for or on behalf of Smiser.

The evidence fails to provide clear and convincing proof of this charge. There is no evidence that the lender, after receiving Respondent's cease and desist letter, took any further steps to foreclose on Smiser's property. Neither good sense, nor any evidence received by this court, suggests that the duty of competence required Respondent to file a lawsuit and seek a temporary restraining order against an action that was neither threatened nor imminent. While the evidence indicates that Respondent's office had taken steps to be prepared to file such an action in the future, should it become necessary, this court does not conclude that Respondent's failure to file such litigation before July 13, 2012, represented any intentional, repeated or reckless failure by him to act with competence.

This count is dismissed with prejudice.

Count 24 - Section 6068, subd. (m) [Failure to Respond to Client Inquiries]

In this count the State Bar alleges that Respondent failed to respond to reasonable requests for status reports by Smiser during the period October 2011 and July 2012.

Smiser credibly testified that she had asked on a number of occasions to receive a status report on her matter, but never received one. Having hired Respondent and his office to act as her attorney, and paying him \$2,000 per month for his professional services, she was more than entitled to receive one.

At trial, Respondent suggested that Smiser's matter had "fallen through the cracks" and sought to shift responsibility for the snafu to others. That effort is unavailing. Respondent was the sole owner of his law practice. All of the other attorneys working at the firm were independent contractors. He was required to supervise and direct their activities. The fact that he had solicited more work than he could handle and/or effectively supervise is no excuse for his failure to ensure that his clients were receiving the service to which they were entitled. In the context of the instant count, his failure to do so raises such a level of malfeasance such that it is a willful violation of his obligations under section 6068, subdivision (m).

Count 25 – Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

At the time that Smiser terminated the firm, she had paid the firm \$22,000. Very little work had been done on her behalf. She was entitled to an accounting. She did not get one. This failure constitutes a willful failure by Respondent to comply with his duties under rule 4-100(B)(3).

Case No. 12-O-16018 (Williams)

On May 1, 2012, Icylyn Williams (Williams) hired Respondent and his law firm for home mortgage loan modification services and other loan forbearance services, including debt counseling and restructuring, and bankruptcy to stop the foreclosure proceedings. On that same date, she executed a fee agreement with Respondent. The agreement, in a different format than the agreement used with all of the clients discussed above, provided, "The legal services to be provided by Attorneys are those necessary to represent the Client in challenging the validity of foreclosure proceedings by the foreclosing lender only, including related debt counseling and restructuring, and bankruptcy." The attached fee schedule provided for an initial payment on May 1, 2012 of \$2,000; a \$1,000 payment on May 10, 2012; and then monthly payments of

\$1,000 to and including May 2013. At the same time, the fee agreement stated, “THE FIRM CHARGES NO UP FRONT FEES FOR LOAN MODIFICATION SERVICES.”

On May 1, 2012, Williams paid Respondent \$2,000. On May 10, 2012, Williams paid Respondent another \$1,000. Williams then signed an authorization, allowing Respondent to electronically withdraw future monthly fees from her bank account. In June 2012, and again in July 2012, Respondent electronically collected and received from Williams’s bank account additional fees of \$1,000, each month. It was stipulated at trial that Respondent eventually collected a total of \$7,000 from Williams.

On or about May 7, 2012, Respondent sent a cease and desist letter to Williams’s lender, requesting certain information and documents. The lender responded by letter dated May 18, 2012.

On August 6, 2012, Respondent sent a letter to Williams, notifying her that his law firm had decided to pursue other areas of practice and will be closing the foreclosure litigation department. Although no litigation had been filed by Respondent’s firm on Williams’ behalf, the letter stated that “your file is currently in active litigation.” As a result, Respondent recommended that Williams move her file to the Consumer Action Law Group, PC (CALGroup). He indicated to her that CALGroup would honor her existing fee agreement with Respondent.

In response to this letter, Williams elected to merely terminate Respondent. On or before August 14, 2012, she sent him a letter, terminating his services and demanding return of her file and the uncashed, post-dated checks.

On August 15, 2012, Respondent’s office deposited Williams’ August 10 check. On September 14, 2012, Respondent’s office deposited Williams’ post-dated check of September 10,

2012. Although Williams subsequently demanded a refund of the \$7,000 that Respondent had received from her, including these last two withdrawals, she never received one.

Count 26 – Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of Smith. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent's retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7.

The fact that this fee agreement contained language, stating that the firm did not charge upfront fees for loan modification work, does not avoid the application of the prohibition of section 2944.7. First, the prohibition is not limited to "upfront" charges. It includes collecting fees while the work is ongoing, as occurred here. Moreover, requiring a person to pay money to receive so-called "free services" is not actually providing free services. Instead, it is charging and collecting for the services before they are provided. In other words, the language in the fee agreement was an obvious, but unsuccessful effort to avoid the prohibition of section 2944.7.

Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 27 – Section 6106 [Moral Turpitude – Unauthorized Withdrawal of Funds]

Here, as described so many times above, the State Bar alleges that Respondent's withdrawal of the funds from Williams' bank account was an act of moral turpitude. As

discussed above, this court agrees, especially since Williams had communicated her decision to terminate her relationship with Respondent directly to him. Respondent's gross negligence in allowing Williams' September check to be improperly deposited into his account, rather than be returned by him to her uncashed, was a willful violation of section 6106.¹³

Count 28 – Rule 3-700(A)(2) [Improper Withdrawal from Employment]

In this count the State Bar alleges "by withdrawing from representation without due notice to Williams and without allowing him [sic] time for employment of other counsel, Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client." Such action, if true, would be a violation of rule 3-700(A)(2).

The evidence fails to provide clear and convincing proof of this charge. Respondent's letter provided adequate notice of his intent to terminate the relationship and it identified an attorney to protect Williams, if she felt that one was needed. Further, Williams testified that Respondent personally offered to stay in the case long enough to protect her, but that she declined his offer. Instead, she stated that she not only had adequate time to hire a different attorney after receiving Respondent's letter, but also that she actually did so. She made no complaint at trial, and there is no evidence, that she suffered any prejudice as a result of Respondent's notice that he was getting out of her case.

This count is dismissed with prejudice.

¹³ The court declines to find that the withdrawal of the August check on August 15, 2012 was unauthorized and an act of moral turpitude. It is not clear that Respondent was notified by Williams of his termination before he received her letter of August 14, 2012, or before the check was deposited on August 15.

Count 29 – Section 6106 [Moral Turpitude-Misrepresentation]

In this count the State Bar alleges that Respondent's statement in his termination letter, that Williams' case was "in actual litigation," was false as there was no lawsuit pending.

The evidence fails to provide clear and convincing proof of this charge. Moreover, the State Bar's position on the facts related to this charge is conflicting. The essence of the foregoing count was that there was something going on with Williams' case that required the immediate retention of counsel to avoid foreseeable prejudice. In discussing Williams' response to the termination letter, she testified that there was a scheduled foreclosure sale date at the time of Respondent's letter.

Given that Respondent had previously sent a cease and desist order as a precursor to filing a lawsuit on the eve of any scheduled foreclosure sale, his cautionary warning to Williams that her matter was in active litigation does not support a finding of an act of moral turpitude. Such a finding would have come closer to being appropriate, had Respondent said in his letter that Williams' dispute with the lender was "not in active litigation."

This count is dismissed with prejudice.

Count 30 – Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

Williams testified credibly that Respondent did not provide her an accounting of his services or of her advanced fees. Further, while Respondent testified that an accounting was provided to Williams at his second meeting with her, the accounting he provided fails to show all of the funds that had been received by Respondent's office from Williams and is not an accurate statement of the time and value of the fees earned by Respondent's office.

Respondent's failure to provide an accounting constituted a willful violation by him of rule 4-100(B)(3).

Count 31– Rule 3-700(D)(1) [Failure to Release File]

At the time that Williams met with Respondent she requested the return of her client file and client documents. At trial her testimony was clear and convincing that, despite several subsequent requests for her file, it was never provided by Respondent to her.

Respondent's failure to provide Williams with her file was a willful violation by him of his obligation to do so under rule 3-700(D)(1).

Case No. 12-O-16213 (Parks)

In July 2010, Tina Youngson and Sang Park (the Parks) hired Respondent and his law firm for home mortgage loan modification services and other loan forbearance services, including filing a lawsuit against their lender. On July 28, 2010, they signed a fee agreement that contained the following language recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The fee agreement provided for an immediate and ongoing payment of fees. In August 2010, Respondent collected and received from the Parks fees of \$3,000. Between August 2010 and May 2012, inclusive, Respondent collected and received from the Parks additional fees, in monthly installments, in the total amount of \$14,500.

In or about September 2010, Respondent prepared a home mortgage loan modification application package on behalf of the Parks.

The lender responded to the loan modification request with a series of letters, demanding that the Parks provide various documents within 15 days from the date of the letter. Receipt of these documents was described by the lender to be a condition of the lender keeping the loan modification request open. The requests frequently asked for “updated” and “most recent” of documents previously provided.

On June 21, 2011, the lender sent one of these letters, making extensive requests for such information as the most recent bank statements and the most recent year-to-date profit/loss statement. When the Parks apparently responded to that request, the lender sent a new letter on July 7, 2011, asking for some of the same documents and adding some new ones. The documents requested included “Death Certificate – A copy of the death certificate of the deceased borrower.” The deadline for compliance with this request was July 22, 2011.

On July 12, 2012, an email message from Jenny of Respondent’s office makes clear that Respondent’s office had asked the Parks to provide the requested information and were told of the need to provide it quickly. Subsequent email messages from the Parks on July 23, 2012, make clear that the Parks did not provide the information by the stated deadline. (Ex. 276, pp. 2-3.)

On July 25, 2011, the lender sent a letter stating that it was denying the loan modification request because of the Parks’ failure to provide the requested documents by the stated deadline.

Respondent then met personally with the Parks. He recommended that a lawsuit be filed against the lender to stop any foreclosure sale once the bank sought to reschedule the sale. His office had drafted a complaint for that purpose. In response, the Parks did not authorize

Respondent's firm to go forward with the lawsuit. Instead, they terminated their relationship with him.¹⁴

Count 32 – Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of the Parks. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent's retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7.

Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 33 – Rule 3-110(A) [Failure to Perform with Competence]

In this count the State Bar alleges that Respondent violated rule 3-100(A) by “not submitting documents that the lender repeatedly requested for the Parks’ loan modification application, and by not preparing and filing a lawsuit or other court action against the Parks’ lender.”

The evidence fails to provide clear and convincing proof of this charge. As previously stated, Respondent can only ask his client to assist in their loan modification request; he cannot

¹⁴ The Parks had seen an ad that a government agency was helping individuals get loan modification. They then sought assistance from that source and were eventually successful in securing a loan modification.

force them to do so. Here, Respondent's office appropriately and timely asked for the requested documents. The Parks failed to provide them by the stated deadline.

With regard to the remaining allegations, Respondent's office did prepare a lawsuit to file against the Parks' lender and asked for authorization to file it when necessary. In response, he was fired. His failure to file a lawsuit, when the client had removed any authority for him to do so, cannot be the basis for a finding of an intentional, reckless or repeated failure to act with competence.

This count is dismissed with prejudice.

Case No. 12-O-16505 (Pratt)

On or about October 25, 2011, Jessie Lee and Wilma Pratt (the Pratts) hired Respondent and his law firm for home mortgage loan modification services and other loan forbearance services including litigation services. On that date they signed a fee agreement that contained the following language recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The fee agreement provided for an initial payment of \$1,500 and ongoing payment of fees while services were ongoing.

In a Scope of Service addendum to the fee agreement, it was stated, "We will prepare and file a Lawsuit in Superior Court for Temporary Restraining Order. We will also seek a

Preliminary Injunction.” Also contained in this addendum was a statement that, “There is NO FEE for Loan Modification Services.”

Between November 2011 and July 2012, inclusive, Respondent collected and received from the Pratts fees in the total amount of \$10,500.

Because the Pratts’ home was in Northern California, the file was handled by the San Jose office, run by Luis Camacho; and it was one of the files that was agreed to be transferred to Camacho when he opened his new office.

On August 28, 2012, the Pratts, having been told that they could hire a cheaper attorney, sent a letter to Respondent, terminating the contract with him and demanding return of the “\$18,000” they claimed that he had previously been paid. They copied the State Bar’s investigator assigned to the Respondent files with the letter, as well as a named Deputy Attorney General. They then hired Luis Camacho to represent them. He eventually filed a bankruptcy on their behalf.

Count 34 – Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of Smith. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent’s retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7. As discussed above, the language in the fee agreement, suggesting that there is no fee for loan modification work, does not avoid the prohibition of the section.

Respondent’s violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By

entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 35 – Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

Respondent acknowledged at trial that he did not provide an accounting to Pratt in response to her demand for a refund. This failure by Respondent constituted a willful violation by him of his obligation under rule 4-100(B)(3).

Case No. 12-O-16817 (Kim)

On or about June 24, 2011, Ki Tae and Kyung Sook Kim (the Kims) hired Respondent and his law firm for home mortgage loan modification services and loan forbearance services, including filing and pursuing a lawsuit against the Kims' lender, obtaining a temporary restraining order to stop foreclosure proceedings, and filing and pursuing a bankruptcy petition. They had previously had a loan modification request denied. On that date, they entered into a fee agreement with Respondent that contained the following language recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The fee agreement provided for an initial non-refundable payment of \$1,500 and then ongoing payment of monthly fees. In this same fee schedule, there was language stating that there was no charge for loan modification services. On or about July 15, 2011, Respondent

collected and received \$1,500 from the Kims as the initial legal fee. Between August 2011 and July 2012, Respondent collected additional fees of \$6,250.

Respondent's firm sent a cease and desist letter to the lender on August 19, 2011. Thereafter, the firm gathered information from the Kims and submitted a loan modification package to the lender on November 22, 2011.

In August 2012, Respondent sent a letter to the Kims, informing them that his office was getting out of the foreclosure litigation business and recommending that the Kims move their file to CALGroup. The Kims eventually went to another law firm, having concluded that they did not like CALGroup.

Count 36 – Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of Smith. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent's retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7. As discussed above, the language in the fee agreement, suggesting that there is no fee for loan modification work, does not avoid the prohibition of the section.

Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 37 - Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

At trial, the State Bar asked that this count be dismissed. At that time the count was dismissed by the court with prejudice.

Count 38 - Section 6068, subd. (m) [Failure to Respond to Client Inquiries]

In this count the State Bar alleges that Respondent failed to respond to the Kims' repeated requests for information between June 2011 and August 2012.

The evidence fails to provide clear and convincing proof of this charge. While Kyung Kim made generalized references to being unhappy with the responsiveness to her telephone calls, her testimony failed to provide credible, clear and convincing evidence to substantiate this charge. Instead, it is clear that Kyung Kim was well aware of developments in the Kims' case. In fact during the time that the State Bar alleges there was no communication with the Kims, Respondent's office gathered from them all of the information necessary to put together a loan modification package and then submitted it in November 2011.

This count is dismissed with prejudice.

Count 39 - Rule 3-700(A)(2) [Improper Withdrawal from Employment]

At trial, the State Bar asked that this count be dismissed. At that time the count was dismissed by the court with prejudice.

Case No. 12-O-17981 (Weigel)

On or about November 9, 2011, Hans Weigel (Weigel) hired Respondent and his law firm for home mortgage loan modification services and other loan forbearance services, including filing a lawsuit against his lender. On July 28, 2010, he signed a fee agreement that contained the following language recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The fee agreement provided for an immediate and ongoing payment of fees. In this same fee schedule, there was language stating that there was no charge for loan modification services. On or about November 17, 2011, Respondent collected and received from Weigel \$3,000, as attorney's fees. On or about November 17, 2011, Respondent also received from Weigel a post-dated check in the amount of \$3,000, plus ten post-dated checks, each in the amount of \$1,000. Between December 2011 and July 2012, Respondent deposited the \$3,000, post-dated check, and eight of the \$1,000 post-dated checks, and thereby received from Weigel additional fees in the total amount of \$11,000.

On December 9, 2011, Respondent sent a cease and desist letter to Weigel's lender.

On May 1, 2012, Respondent filed a lawsuit against Weigel's lender.

On August 6, 2012, Respondent sent a letter to Weigel, notifying him that Respondent's law firm had decided to pursue other areas of practice and would be closing the foreclosure litigation department. As a result, Respondent recommended that Weigel move his file to the CALGroup. He indicated in his letter that CALGroup would honor Weigel's existing fee agreement with Respondent.

On August 10, 2012, Weigel signed a Letter of Intent to Transition, indicating that he wished to transfer his work and file to CALGroup. The letter included the statement, "I agree to pay my monthly attorney fees to Consumer Action Law Group, PC as of the date of this letter."

Notwithstanding the above letter, on August 20, 2012, Respondent cashed another of Weigel's post-dated checks and received \$1,000 from Weigel's bank account. Weigel then called Respondent's office to complain and was told that a refund check would be provided. It never was.

On September 7, 2012, a demurrer was filed by the lender to the First Amended Complaint in the action. Although Weigel had agreed to have CALGroup take over the handling of Weigel's pending lawsuit against the lender, Weigel did not sign a substitution of attorney form until October 23, 2012, and CALGroup did not substitute into the action until October 25, 2012. Because Respondent was still counsel of record in the lawsuit when the demurrer was filed, on September 11, 2012, Respondent left a voicemail with Weigel, informing Weigel that a court hearing was to be held on October 6, 2012; that Respondent would continue to represent Weigel in his lawsuit; that Respondent would also work on a loan modification for Weigel; and that Respondent would deposit another one of Weigel's post-dated \$1,000 checks.

On or about October 23, 2012, Respondent filed an opposition to the demurrer.

On or about October 25, 2012, Respondent filed the executed substitution of attorney form with the court, thereby withdrawing as attorney-of-record in Weigel's lawsuit.

There is no evidence that Respondent actually cashed or deposited any of Weigel's checks after the September 11, 2012 phone call.

**Count 40 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) -
Illegal Advanced Fee]**

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of Weigel. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent's retention and required that both an advance payment and ongoing monthly

payments be made. This fee agreement violated section 2944.7. As discussed above, the language in the fee agreement, suggesting that there is no fee for loan modification work, does not avoid the prohibition of the section.

Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 41 - Section 6106) [Moral Turpitude - Unauthorized Withdrawal of Funds]

In this count, the State Bar alleges that Respondent was guilty of an act of moral turpitude by withdrawing the \$1,000 from the bank account of Weigel, without the consent or knowledge of Weigel, after Weigel had returned the transition letter, drafted by Respondent, indicating that future monthly payments would be paid by Weigel to CALGroup. This court agrees.

While the withdrawal apparently resulted from the improper performance by Respondent's accounting department, rather than any act of dishonesty by Respondent himself, the withdrawal was done after Respondent's office had been terminated by Weigel and after Respondent should have made certain that no further withdrawals of funds would be effected by his office. Respondent was candid in his testimony regarding the ongoing problems that he encountered with the accounting department not being apprised of, or responding appropriately to, a client's decision to terminate an existing fee agreement. Here, Respondent's failure to affirmatively and personally take steps assuring that funds would not be improperly withdrawn

from the bank account of Weigel constituted an act of gross negligence and a willful violation of section 6106.

Respondent's subsequent acts on behalf of Weigel do not provide retroactive authorization for Respondent's prior improper actions. While Respondent may ultimately be entitled to a fee for his subsequent work, he was not entitled to take it when he did.

Count 42 - Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

At the time that Respondent terminated his representation of Weigel, he did not provide an accounting to Weigel of the fees that had been paid. This failure constituted a willful violation by Respondent of his duties under rule 4-100(B)(3).

Count 43 - Rule 3-700(A)(2) [Improper Withdrawal from Employment]

At trial, the State Bar asked that this count be dismissed. At that time the count was dismissed by the court with prejudice.

Case No. 13-O-10149 (Khachi/Mikaeli)

In May 2012, Janet Khachi (Khachi) and Bijan Mikaeli (Mikaeli) hired Respondent and his law firm for home mortgage loan modification services and other loan forbearance services including obtaining a temporary restraining order, a loan modification and filing bankruptcy. On April 22, 2012, they signed a fee agreement with Respondent's office. This fee agreement defined the scope of work as being "those necessary to represent the Client in challenging the validity of foreclosure proceedings by the foreclosing lender only, including related debt counseling and restructuring, and bankruptcy."

The fee agreement provided for an initial payment of a \$5,000 fee and monthly payments of \$1,000 fees while services were ongoing. In this same fee schedule, there was language stating "THE FIRM CHARGES NO UP FRONT FEES FOR LOAN MODIFICATION

SERVICES.” Between May and July 2012, Respondent collected and received from Khachi and Mikaeli \$9,000 as legal fees.

On May 1, 2012, a lawsuit had been filed on behalf of Khachi against her lender. On June 7, 2012, Respondent substituted into the action as counsel for Khachi and filed an amended complaint against the lender.

On July 13, 2012, the lender filed a demurrer to the amended complaint. Respondent received notice of the demurrer.

On August 6, 2012, Respondent sent a letter to Khachi, notifying her that Respondent’s law firm had decided to pursue other areas of practice and would be closing the foreclosure litigation department. As a result, Respondent recommended that Khachi move her file to the CALGroup. He indicated in his letter that CALGroup would honor the existing fee agreement with Respondent.

On August 8, 2012, Respondent filed an opposition to the demurrer.

During this time period, Khachi and Mikaeli met with Respondent regarding the selection of replacement counsel. They initially told Respondent that they were going to hire CALGroup, but, on meeting with that firm, Khachi and Mikaeli decided against doing so. They then went back to Respondent, who agreed to continue to handle the case until new counsel could be hired. During the trial of the instant matter, Mikaeli testified that Respondent continued to represent them until September 2012.

Count 44 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of Khachi and Mikaeli. This court agrees. The fee agreement clearly contemplated that loan modification work would be

encompassed within Respondent's retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7. As discussed above, the language in the fee agreement, suggesting that there is no fee for loan modification work, does not avoid the prohibition of the section.

Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 45 - Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

At the time that Respondent terminated his representation of Khachi and Mikaeli, he did not provide an accounting to them of the fees that had been paid. This failure constituted a willful violation by Respondent of his duties under rule 4-100(B)(3).

Count 46 - Rule 3-700(A)(2) [Improper Withdrawal from Employment]

In this count the State Bar alleges that Respondent withdrew as counsel without adequate notice to avoid foreseeable prejudice. As discussed above, the evidence fails to provide clear and convincing proof of this charge. To the contrary, Respondent continued to represent his clients until they were able to retain replacement counsel. There is no evidence of any prejudice resulting from his termination of the relationship.

This count is dismissed with prejudice.

Case No. 13-O-10172 (Ayres)

On November 19, 2011, Frank J. Ayre, Jr. and Aida A. Ayre (the Ayres) hired Respondent and his law firm for home mortgage loan forbearance services, including litigation

services to obtain a restraining order to halt the foreclosure process and to file a lawsuit against the Ayres' lender for purposes of obtaining a loan forbearance. They had previously used another law firm unsuccessfully to obtain a loan modification, and that firm suggested that the best way to secure a loan modification would be to have Respondent's firm file litigation against the lender.

On November 29, 2011, the Ayres signed a fee agreement with Respondent's office that contained the following language recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The fee agreement provided for an immediate payment of a \$2,500 fee and ongoing monthly payments of \$1,500 "until the resolution of the case and services." That quoted term was defined in the fee agreement to mean: "either (1) loss of title to the property ...and loss of possession of the Subject Property , or (2) Client begins payments on a Loan Modification of their home mortgage loan." In this same fee schedule, there was language stating that there was no charge for loan modification services.

In a Scope of Service addendum to the fee agreement, it was stated, "We will prepare and file a Lawsuit in Superior Court for Temporary Restraining Order. We will also seek a Preliminary Injunction." Also contained in this addendum was a statement that, "There is NO FEE for Loan Modification Services."

On November 19, 2011, Respondent collected and received from the Ayres fees of \$2,500. On November 19, 2011, Respondent also collected and received from the Ayres one post-dated check in the amount of \$1,500. In December 2011, Respondent deposited the post-dated check and received additional fees of \$1,500. In January 2012, Respondent collected and received from the Ayres additional fees in the amount of \$1,575.

On December 14, 2011, Respondent filed a lawsuit against the Ayres' lender. Respondent also filed an ex parte application for a temporary restraining order to stop the foreclosure sale of the Ayres' home. The court denied the ex parte application.

On December 15, 2011, after the lawsuit had been filed, the lender postponed the foreclosure sale of the Ayres' home.

In February, 2012, while the lawsuit was still pending, the lender agreed to offer a trial loan modification to the Ayres. This trial modification required them to make three modified monthly payments, commencing March 1, 2012 and ending May 1, 2012. After that trial period was completed, the lender would notify the Ayres whether the trial modification was being made permanent.

On February 14, 2012, because the bank had offered the loan modification proposal, Respondent filed a request for dismissal of the Ayres' lawsuit. At the same time, it was agreed that there would be no foreclosure sale date established during the trial period.

The Ayres made the three payments, but then did not hear from the lender about whether the modification had been made permanent. They then consulted with Respondent's office, who told them to continue making the modified loan payments, which they did.

On June 6, 2012, the lender notified the Ayres that it had approved a permanent modification of the loan. The first payment under this loan modification was due on July 1,

2012. Under the terms of the fee agreement, the contract would be deemed completed and no additional fees owed after that date.

In mid-June, 2012, Respondent's office sought to be paid for the June monthly payment, still owed under the contract. The Ayres prevented that payment from being effected by closing their bank account.

**Count 47 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) -
Illegal Advanced Fee]**

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of the Ayres. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent's retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7. As discussed above, the language in the fee agreement, suggesting that there is no fee for loan modification work, does not avoid the prohibition of the section. The fact that there was a fee being charged for loan modification work under this agreement, and agreements like it for each of the clients discussed in this decision, is made abundantly clear by the fact that the Ayres continued to be charged under the fee agreement even after the dismissal of their lawsuit had been filed and they were in the course of the three-month trial modification period.

Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 48 - Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

In this count the State Bar alleges that Respondent's contract was terminated in February 2012, before the loan modification was finally approved, and that Respondent was thus required to provide an accounting of his time and fees.

The evidence fails to provide clear and convincing proof of this charge. The Ayres did not terminate Respondent in February, but instead they continued to consult with his office regarding their dealings and status with the lender. Respondent's employment continued until July 1, 2012, when it terminated successfully and pursuant to the terms of the agreement. Respondent had done what he was required to do under the agreement and he had achieved precisely the outcome that the Ayres had sought.

The State Bar argued at trial that an attorney is required to provide an accounting to a client of his work and right to fees, even in situations (as here) where the contract has been fully performed, the fee was based on an agreed amount (rather than an hourly charge), and there has been no demand by the client for an accounting. The State Bar, however, has failed to present any case law to show that there is such a duty, and this court declines to find one. To do so would place an unjustified burden on all practicing attorneys and would eliminate many of the favorable features of agreeing to provide legal services on a fixed rate basis.

This count is dismissed with prejudice.

Count 49 - Section 6106 [Moral Turpitude-Unauthorized Withdrawal of Funds]

In this count the State Bar alleges that Respondent's office was not authorized to receive payment for its services in June 2012. The basis for this contention is the factual allegation in the NDC that Respondent was terminated in February, when the trial loan modification plan was received.

The evidence fails to provide clear and convincing proof of this charge. The Ayres did not terminate Respondent in February, but instead they continued to consult with his office regarding their dealings and status with the lender. Respondent's employment continued until July 1, 2012, when it terminated successfully and pursuant to the terms of the agreement. Respondent had done what he was required to do under the agreement and he had achieved precisely the outcome that the Ayres had sought. Pursuant to the contract, he was entitled to be paid for those services up to July 1, 2012.

This count is dismissed with prejudice.

Case No. 13-O-10173 (Gonzalez)

In February 2012, Javier Gonzalez (Gonzalez) hired Respondent and his law firm for home mortgage loan forbearance services, including lender litigation, defense of the unlawful detainer action, and reinstatement of home ownership and the home mortgage. Gonzalez's home had already been sold at a foreclosure sale. On February 1, 2012, Gonzalez entered into a retainer agreement with Respondent. This agreement provided that, "The legal services to be provided by Attorneys are those necessary to represent the Client in real estate negotiations and litigation, debt counseling and restructuring, bankruptcy, and loan modification; more specifically: filing a Wrongful Foreclosure, Unlawful Detainer Defense." Between February and August 2012, Gonzalez paid Respondent fees totaling \$11,000.

Respondent's office initially resisted the unlawful detainer action. Eventually, however, Gonzalez was evicted from his home and had to move out in July 2012.

On June 15, 2012, Respondent filed a lawsuit against Gonzalez's lender. After the lender filed a demurrer, Respondent filed an amended complaint on July 18, 2012.

The lender filed a demurrer to the amended lawsuit on July 24, 2012.

After Gonzalez was evicted from his home, he decided to terminate the services of Respondent's offices. On August 1, 2012, he notified the office that he was terminating their relationship and signed a document, drafted by Respondent, formally terminating Respondent's office and agreeing that it had no further obligation to further litigate the case.

On that same day, Respondent's office processed the monthly payment of Gonzalez of \$1,200. There is no evidence whether this was done before or after Gonzalez terminated Respondent's services.

Gonzalez, on learning of the payment, contacted Respondent's office to complain and was informed that the money would be returned. It never was.

Count 50 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of Gonzalez. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent's retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7. As discussed above, any language in the fee agreement, suggesting that there is no fee for loan modification work, does not avoid the prohibition of the section.

Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 51 - Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

After being terminated by Gonzalez, Respondent never provided Gonzalez with an accounting of the fees and work on the case. This failure to provide an accounting constituted a willful failure by Respondent to comply with rule 4-100(B)(3).

Count 52 - Section 6068, subd. (m) [Failure to Inform Client of Significant Development]

Count 53 - Section 6068, subd. (m) [Failure to Respond to Client Inquiries]

In these counts, the State Bar alleges that Respondent failed to inform Gonzalez of significant developments and failed to respond to his requests for status updates.

The evidence fails to provide clear and convincing proof of these charges.

Gonzalez testified that he contacted Respondent's office on a regular basis to discuss the status of his matters. He recounted, through an interpreter, that he was informed that people were working on his case. Because Gonzalez did not speak English, his communications with the attorneys at Respondent's office went through a particular employee at the firm, who served as a Spanish-speaking interpreter. This individual appeared and testified credibly at trial, confirming that Gonzalez communicated with the office on a regular basis about developments in his matters, recalling that the attorneys routinely responded to his calls, and persuasively disputing the various factual allegations made by the State Bar regarding this count.

This count is dismissed with prejudice.

THIRD NOTICE OF DISCIPLINARY CHARGES

Case No. 12-O-17882 (Lansdale)

In June 2012, Michael Lansdale (Lansdale) hired Respondent and his law firm for home mortgage loan modification services and other loan forbearance services including obtaining a temporary restraining order, a loan modification and filing bankruptcy. On June 29, 2012, he

signed a fee agreement with Respondent's office. This fee agreement defined the scope of work as being "those necessary to represent the Client in challenging the validity of foreclosure proceedings by the foreclosing lender only, including related debt counseling and restructuring, and bankruptcy."

The fee agreement provided for an initial payment of a \$3,000 fee and ongoing monthly payments of \$1,000. In this same fee schedule, there was language stating "THE FIRM CHARGES NO UP FRONT FEES FOR LOAN MODIFICATION SERVICES."

Lansdale paid \$1,500 on June 29, 2012, and another \$1,500 on July 19, 2012. There is no evidence of any subsequent payments to Respondent's office pursuant to the above fee agreement.

Because Lansdale's property was located in Northern California, his file was handled by Respondent's San Jose office, managed by Luis Camacho. At the time of Respondent's agreement with Camacho in July 2012, that Camacho would open his own office and take over Respondent's files in San Jose, Respondent understood that Lansdale's file had been assumed by Camacho.¹⁵ When Respondent's office in Los Angeles subsequently learned that such was not the case, it began to take steps to fulfill the contract.

In September 2012, Respondent's office began the process of putting together a loan modification package to submit to Lansdale's lender.

Then, when a foreclosure sale was scheduled for October 27, 2012, Respondent filed a lawsuit against Lansdale's lender on October 15, 2012. This was done to attempt to hold off the foreclosure. It did not.

¹⁵ Lansdale, in his testimony at trial, confirmed being informed in August 2012 that Respondent was no longer going to be handling his file and that another firm was being recommended.

Respondent then recommended to Lansdale that a bankruptcy petition be filed. Lansdale did not authorize him to do so. Instead, Respondent understood that Lansdale was going to have a local attorney handle the petition.

On the day of the scheduled sale, Respondent called Lansdale to confirm that the bankruptcy had been filed and that the foreclosure sale was not going forward. He learned that Lansdale had not filed a petition. As Lansdale remembers the call, Respondent “berated” him for not doing so. The foreclosure sale went forward as scheduled.

Eventually, Lansdale was faced with being evicted from his home. In conversations with Respondent’s office, he was advised that he had two options: file a bankruptcy petition, to delay the eviction date or decide to move out and merely authorize Respondent’s office to negotiate the terms of when Lansdale would vacate the premises. Lansdale initially elected to file the bankruptcy petition and Respondent’s office filed a chapter 7 bankruptcy petition on Respondent’s behalf on April 8, 2013.

On April 7, 2013, Lansdale paid Respondent \$1,000. The filing fee for the petition was \$306.

Lansdale eventually agreed to vacate his home at a future date. He did so on May 2, 2013. In the interim, the bankruptcy petition was allowed to be dismissed.

**Count 1 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) -
Illegal Advanced Fee]**

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee in 2012 to perform mortgage loan modification services on behalf of Lansdale. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent’s retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7. As discussed

above, the language in the fee agreement, suggesting that there is no fee for loan modification work, does not avoid the prohibition of the section.

Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 2 - Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

In this count the State Bar alleges that Respondent owes unearned fees and has failed to return them, in violation of rule 3-700(D)(2).

The evidence fails to provide clear and convincing proof of this charge.

The evidence is uncontradicted that Respondent and his office did substantial work on Lansdale's behalf, including filing a civil lawsuit, gathering information for a loan modification package, seeking to avoid a unlawful eviction order, and filing a bankruptcy petition. In return, it received a total of \$4,000. When the costs incurred by Respondent's office are deducted from this small fund, the net revenue is small.

The State Bar offered no evidence as to the reasonable value of Respondent's services. In contrast, a billing prepared by Respondent's office indicates that the value of his office's services well exceeds the money that was paid.

Nor can it be said that Lansdale received no value for the work that Respondent's office did. He was facing foreclosure when he first hired Respondent. As a result of Respondent's efforts, and despite the lack of effort by Lansdale, Lansdale was able to live in his own home without paying the mortgage for more than ten months.

This count is dismissed with prejudice.

Count 3 - Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

At trial, the State Bar asked that this count be dismissed. At that time the count was dismissed by the court with prejudice.

Count 4 - Rule 4-100(A)(2) [Failure to Maintain Funds in Client Trust Account]

At trial, the State Bar asked that this count be dismissed. At that time the count was dismissed by the court with prejudice.

Case No. 12-O-17720 (Garcia)

On March 21, 2012, Graciela Garcia (Garcia) hired Respondent. At the time, Garcia's property was scheduled to be sold in foreclosure on April 9, 2012. On March 21, 2012, Garcia entered into a fee agreement with Respondent's office. This fee agreement contained the following language recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The fee agreement provided for an immediate payment of a \$3,600 initial fee and ongoing payments of \$1,500 while services were ongoing. In the Scope of Services addendum to this agreement, there was language stating that there was no charge for loan modification services.

On March 21, 2012, Respondent collected and received \$3,600 from Garcia. No other fees were ever paid by her.

Garcia met with representatives of Respondent's office on March 30, 2012. At that meeting, she was informed that, because her property was an investment property, the firm wasn't able to help her. She then terminated the relationship and asked for her money back.

On April 6, 2012, Garcia came back to the firm to obtain her refund. Respondent then became personally involved. He indicated that his firm could have helped her. However, because she now wanted to terminate the agreement, he had her sign a Release of Liability Letter. In this letter, after noting the original fee agreement, it is stated:

However, you wish to terminate the retainer agreement signed March 21, 2012.

By signing this document, Mr. and Mrs. Garcia hereby agree to release the Law Offices of Gene W. Choe from any liability as it pertains to the foreclosure of her home located at the above stated address."

Respondent did not provide Garcia with a refund at that meeting. When he had not done so by April 27, 2012, Garcia wrote him a letter on that date, demanding that she receive her refund. In her letter, she mentioned that she had already been in contact with the State Bar.

On June 6, 2012, Respondent refunded \$1,915.50 to Garcia. In support of that limited refund, he provided an accounting, showing the work that purportedly had been done. The bulk of the work had been done after Garcia had terminated the relationship on March 30, 2012, and demanded a refund. "

**Count 5 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) -
Illegal Advanced Fee]**

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of Garcia. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent's retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7. As discussed above, the language in the fee agreement, suggesting that there is no fee for loan modification work, does not avoid the prohibition of the section.

Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 6 - Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

Garcia demanded a refund of her money on March 30, 2013, when she was informed that Respondent's office could not help her because her property was investment property, rather than her personal residence. Respondent did not make even a partial refund until June 7, 2013. This delay in making a refund constituted a willful violation by him of rule 3-700(D)(2).

Count 7 - Rule 4-100(A)(2) [Failure to Maintain Funds in Client Trust Account]

At the time that Garcia signed the refund check, marked "Full and Final Refund," she wrote a note indicating that there was still a balance due. In this count the State Bar alleges that Respondent required as a result of this note to take the portion of the fee that he had retained and

place it in his client trust account. Since he did not do so, it alleges that he violated rule 4-100(A)(2).

This court disagrees. The refund amount was tendered with an explanation of its calculation and with a clear designation on the check that it was a full and final refund. The State Bar has failed to demonstrate that Garcia's unannounced and unauthorized modification of the check had the effect of negating the condition that was written on it. Moreover, there is no evidence that Respondent was ever aware of this modification.

This count is dismissed with prejudice.

Count 8 - Rule 3-400(A) [Limiting Liability to a Client]

In this count, the State Bar alleges that Respondent violated the prohibition of rule 3-400(A) by "contracting with a client prospectively limiting Respondent's liability to the client for Respondent's professional negligence." In support of this allegation, the State Bar refers to the release language in the termination agreement Garcia signed on April 6, 2013. As noted above, this language read:

By signing this document, Mr. and Mrs. Garcia hereby agree to release the Law Offices of Gene W. Choe from any liability as it pertains to the foreclosure of her home located at the above stated address."

Rule 3-400(A) provides that a member shall not: "(A) Contract with a client prospectively limiting the member's liability to the client for the member's professional malpractice[.]"

The evidence is not clear and convincing that this was a prospective limitation of liability. The release language was executed after Respondent had performed all of his professional services on Garcia's behalf and after his professional relationship had been terminated. If acts of malpractice by Respondent were to occur during the relationship, they had

already taken place. (See *Donnelly v. Ayer* (1986) 183 Cal.App.3d 978, 984.) Further, the evidence is not clear and convincing that this language qualified as a contract. There is an apparent absence of any consideration received by Garcia for her purported agreement.

This count is dismissed with prejudice.

Case No. 12-O-16713 (Nguyen)

At the conclusion of the State Bar's case-in-chief on culpability, the State Bar asked that this case be dismissed in its entirety. At that time this case, consisting of counts 9-12, was dismissed with prejudice.

Case No. 12-O-15946 (Herrera)

On or about January 30, 2012, Patricia Herrera (Herrera) employed Respondent for legal services including filing a lawsuit against her lender, for a rental property she owned in South San Francisco, California. On February 1, 2012, she signed a fee agreement with Respondent's office. This agreement contained the following language recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The fee agreement provided for an immediate payment of \$2,500 and ongoing monthly payments of \$1,750 until resolution of the case or services. This later term was defined in the agreement to include the client beginning payments on a loan modification. In the Scope of

Services addendum, there was language stating that there was no charge for loan modification services.

Beginning on February 1, 2012, through until April 10, 2012, Respondent collected and received from Herrera a total sum of \$6,000.

Because Herrera's property was in Northern California, her file was being handled by Luis Camacho and other employees in Respondent's San Jose office. Herrera lived in Texas.

When a foreclosure sale date on the property was scheduled, plans were made to cause that date to be postponed by filing a bankruptcy. Because Herrera lived in Texas, the petition needed to be filed in the bankruptcy court there. Camacho and other members of Respondent's San Jose office advised her of the need for her to file the petition, but made clear that they could not act as counsel for her.

On February 27, 2012, Herrera filed, in propria persona, a voluntary emergency petition for chapter 13 bankruptcy in a United States Bankruptcy Court located in Texas. She did not file all of the required schedules with the initial emergency petition.

On March 15, 2012, Camacho warned Herrera in an email that she needed to follow up with the paperwork and other requirements of the Texas bankruptcy court or the petition "will be dismissed and your homes will fall out of bankruptcy protection." He informed her that she needed to retain a bankruptcy attorney in Texas.

Herrera, acting on Camacho's advice, then went to consult with the Texas attorney, but it does not appear that she ever retained him.

On learning that, Camacho again warned Herrera in writing that she needed to fill out the bankruptcy papers.

On March 26, 2012, the bankruptcy court dismissed the petition without prejudice.¹⁶

On April 24, 2012, Respondent filed a lawsuit against Herrera's lender for damages and equitable relief. Herrera was informed that the intent was to use the lawsuit to seek a temporary restraining order and an OSC why a preliminary injunction should not be issued to enjoin the foreclosure of Herrera's property. The foreclosure sale was scheduled to take place on April 27, 2012.

On April 25, 2012, a representative of Respondent's San Jose office emailed Herrera to confirm that she understood that, if the TRO effort was not successful, Herrera would need to immediately pursue a bankruptcy petition in the Texas court. In this email, Herrera was again advised that Respondent's office could not assist her to file "a complete bankruptcy" in the Texas court, "hence my recommendation for you to retain experienced bankruptcy attorney to file your paperwork and represent you."

On April 26, 2012, Respondent filed an ex parte application for TRO and OSC. On the same day, the court denied the motion, stating that Herrera had failed to demonstrate a likelihood of success on the merits. Respondent's office then filed an emergency chapter 13 bankruptcy, and was successful in moving the foreclosure sale date back to May 30, 2012.

On May 3, 2012, Luis Camacho, acting on behalf of Respondent's office, authored a letter to Herrera, unilaterally terminating the office's representation of her in all matters. This termination was characterized in the letter as "beginning immediately." The letter acknowledged that the firm had filed both a lawsuit and a bankruptcy petition on Herrera's behalf, both of which were still pending, and purported to "release" Respondent's office from having any further

¹⁶ The parties filed a stipulation with this court stating that the dismissal was "with prejudice." The court record, however, makes clear that the dismissal was based solely on Herrera's failure to file the required paperwork and is specifically stated to be "without prejudice." (Ex. 442, pp. 2, 17.)

duty to further defend Herrera's property from foreclosure. Toward the conclusion of the letter, it was stated that "any refunds, if applicable, will be returned 6 to 10 days from the accounting department." The letter was sent as an attachment to an email. A copy of that email was sent to Respondent.

On May 15, 2012, Herrera emailed a request that Respondent's office send her the papers on the bankruptcy action that it had filed. When she sent another email on the following day, saying that she needed it quickly, Respondent advised his staff in writing to scan the file and email it to her.

On May 25, 2012, Herrera sent Respondent an email complaining that she had not yet received a refund. In this email she also asked for an accounting.

On May 31, 2012, Herrera sent another email to Respondent. In this email, she indicated that her attorneys "need your assistance to dismiss the case you filed as it is interfering with their work."

On June 7, 2012, Camacho replied by email that he was dismissing the filed litigation that day. The eventual request for dismissal was filed on June 22, 2012, and the action dismissed without prejudice on that same day.

Herrera continued to complain about not receiving a refund. Finally, on July 9, 2012, she received an email from a member of Respondent's office, indicating that the firm would be sending an accounting and a refund of \$1,000. This refund was described in the email as "extremely generous."

The refund was not forthcoming. When Herrera complained to Respondent about it, he would copy her on emails sent to his staff, directing them to process the request. The refund was still not forthcoming.

On July 22, 2012, not yet having received any refund, Herrera sent an email, stating that she was going to the State Bar.

On July 24, 2012, Respondent's office sent an email to Herrera, attaching a purported accounting. In this email, the office indicated that Respondent "as good faith, is refunding you \$500. [¶] your refund will be mailed out today."

To date, Herrera has not received a refund.

Count 13 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of Herrera. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent's retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7. As discussed above, the language in the fee agreement, suggesting that there is no fee for loan modification work, does not avoid the prohibition of the section.

Respondent's willful violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 14 - Rule 3-110(A) [Failure to Perform with Competence]

In this count the State Bar alleges that Respondent failed to act with competence in filing "the meritless Voluntary Petition, by filing a meritless lawsuit, and filing a meritless TRO application."

The evidence fails to provide clear and convincing proof of this charge.

The State Bar presented no evidence regarding the actual merits of the three proceedings, other than the fact that each was terminated. The bankruptcy, however, was terminated without prejudice and solely because Herrera failed to file the required papers, despite the admonitions of Respondent's office. The lawsuit was dismissed without prejudice, at the request of Herrera's new lawyers. The reasons for that request are not revealed by any evidence presented to this court. Finally, the failure of a court to grant a TRO does not, by itself, provide clear and convincing proof that the proffering attorney has acted without competence intentionally, recklessly, or repeatedly.

This count is dismissed with prejudice.

Count 15 - Rule 3-700(A)(2) [Improper Withdrawal from Employment]

As described above, Respondent's office terminated its representation of Herrera, effective immediately, with no advance notice and without regard to the fact that it was counsel of record in two pending proceedings. Respondent was aware of the action and is responsible for it. This action constituted an improper withdrawal from employment by Respondent in willful violation of rule 3-700(A)(2).

Count 16 - Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

Count 17 - Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

Herrera demanded a refund and an accounting in early May. Despite promises, and notwithstanding many complaints and threats by her to Respondent and his office, she did not receive what purported to be an accounting until late July and only after threatening to go to the State Bar. She has never received a refund.

Respondent's conduct constituted willful violations of both rule 4-100(B)(3) and rule 3-700(D)(2).

Count 18 - Section 6104 [Appearing for Party without Authority]

At trial, the State Bar asked that this count be dismissed. At that time the count was dismissed by the court with prejudice.

Count 19 - Rule 3-700(D)(1) [Failure to Release File]

In this count the State Bar alleges “On January 13, 2013, Herrera sent a letter to Respondent requesting that he release her file to her. Respondent received the letter. Respondent did not release the file and he did not otherwise communicate with Herrera.”

The evidence fails to provide clear and convincing proof of this charge. There is no evidence before this court of any such letter or request. While there is evidence that Herrera asked for her bankruptcy file in May of 2012, there is no evidence that it was not provided to her in response to Respondent’s directive to his staff to scan and email it.

This count is dismissed with prejudice.

Case No. 12-O-16856 (Parker)

On or about November 2, 2011, Edna Parker (Parker) hired Respondent. On that date, she signed a fee agreement that contained the following language recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The fee agreement provided for an immediate payment of \$2,500 and ongoing monthly payments of \$1,250 while services were ongoing. In this same fee schedule, there was language stating that there was no charge for loan modification services.

Beginning on or about November 2, 2011, Respondent collected and received from Parker a total sum of \$9,500.

On or about December 14, 2011, Respondent contacted Parker's mortgage lender by telephone, informing it of his representation of Parker. Thereafter, there is no evidence that a loan modification package was ever sent by Respondent's office to the lender.

On August 2, 2012, Parker having seen no indication of any work being done on her behalf, sent a letter to Respondent, terminating his services and demanding an accounting. She copied both the State Bar's assigned investigator and a particular Deputy Attorney General with her letter. At the time of this letter, she had already retained the new office of Luis Camacho to take over her work.

Respondent did not provide an accounting to Parker as a result of the termination of this employment. Nor did he provide a refund of any fees. His reason for not making a refund was his understanding that Parker was one of the clients that he had transferred to Camacho as part of the agreement he had previously reached with Camacho. As part of this agreement, Respondent was entitled to keep the prior fees he had received in exchange for Camacho agreeing to provide future services to the transferred client for no more than the continuing monthly contract payments. As part of this agreement, Camacho was transferred ownership of the office equipment and other assets in what had previously been Respondent's San Jose office.

**Count 20 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) -
Illegal Advanced Fee]**

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of Parker. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent's retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7. As discussed above, the language in the fee agreement, suggesting that there is no fee for loan modification work, does not avoid the prohibition of the section.

Respondent's willful violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 21 - Rule 3-700(D)(2) [Failure to Refund Unearned Fee]

Respondent acknowledges that he failed to refund unearned fees to his client. While he used those fees in a manner that he felt was benefitting the client, the client was not a participant in that transaction. Under such circumstances, Respondent's failure to refund fees was a willful violation of rule 3-700(D)(2).

Count 22 - Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

Respondent did not provide an accounting to Parker after she terminated her relationship with him and demanded a refund. His failure to do so constituted a willful violation of rule 4-100(B)(3).

Count 23 - Rule 4-100(A)(2) [Failure to Maintain Funds in Client Trust Account]

In Parker's termination letter, she disputed Respondent's entitlement to keep any of the fees that she had previously paid to him. Respondent was aware that the client was disputing his entitlement to be paid fees, but made no effort to resolve this dispute.

Respondent also did not place the disputed funds into his client trust account until the dispute was resolved.

The State Bar alleges that Respondent's had a duty under rule 4-100(A)(2) to put the disputed fees into his client trust account. The State Bar has failed to present clear authority to show such a duty. (See instead, State Bar Standing Committee on Professional Responsibility and Conduct, Opinion 2006-171.)

This count is dismissed with prejudice.

Count 24 - Rule 3-110(A) [Failure to Perform with Competence]

In this count the State Bar alleges that Respondent failed to act with competence in the handling of Parker's matter.

The evidence fails to provide clear and convincing proof of this charge.

While Respondent, having transferred his files to Camacho, is unable to present any evidence that his office did any work for Parker other than contact the lender and gather information for a loan modification proposal, the evidence does not show that the possible inaction on the office's part represented incompetency. Parker's purpose in hiring Respondent was to be able to avoid a foreclosure sale on her home. During the time that Respondent represented her, his office did that. If the bank was not taking steps to threaten Parker's continued ownership of her property, acting aggressively to remind them of the situation may not

be the best strategy. To borrow from an old saying, sometimes it is better to let a sleeping dog lie.

The State Bar has presented no expert testimony or evidence suggesting that the course of conduct taken by Respondent's office was incompetent or that some other course of conduct was required or would have generated a better result. It has the burden of proof here.

This count is dismissed with prejudice.

Case No. 12-O-16862 (Lynn)

On October 5, 2011, Kevin Lynn and Janet Lynn (the Lynns) hired Respondent. On that date, they entered into a fee agreement that contained the following language recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The fee agreement provided for an immediate payment of \$3,000 and ongoing monthly payments of \$2,000 while services were ongoing. In this same fee schedule, there was language stating that there was no charge for loan modification services.

Kevin Lynn had previously filed a petition in bankruptcy. On October 11, 2011, Respondent substituted into the action.

On December 11, 2011, after the lender had successfully filed for a relief from stay, the bankruptcy petition was dismissed by the court.

Between October 2011 and March 2012, Respondent collected and received from the Lynns a total sum of \$11,075.

In February 2012, Respondent's office, in a letter signed by Luis Camacho, purported to terminate the relationship with the Lynns, due to the fact that their property was not an owner-occupied residence. Respondent then prevailed on them to continue with his office and they agreed to do so, but based on converting their arrangement retroactively to an hourly basis. On April 3, a letter was sent to Respondent by an attorney for the Lynns, confirming the new agreement and asking for an accounting of the past time. They never received such an accounting; nor did they receive any billings for the work done by Respondent's office after that date.

On August 6, 2012, Respondent sent a letter to the Lynns, notifying them that his law firm had decided to pursue other areas of practice and was closing the foreclosure litigation department. The letter stated that "your file is currently in active litigation." As a result, Respondent recommended that the Lynns move their file to CALGroup. He indicated that CALGroup would honor the existing fee agreement with Respondent.

On August 22, 2012, the Lynns notified Respondent that they were moving their file to CALGroup.

On August 25, 2012, Respondent sent a message to the Lynns regarding the transfer and recommended future handling. In this message he indicated that he would be sending a billing for all of the work that had been done in the past. He never did.

On September 18, 2012, the Lynns sent a letter to Respondent, demanding an accounting and a return of all of the funds that had previously been paid to Respondent. An accounting was never sent.

**Count 25 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) -
Illegal Advanced Fee]**

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of the Lynns. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent's retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7. As discussed above, the language in the fee agreement, suggesting that there is no fee for loan modification work, does not avoid the prohibition of the section.

Respondent's willful violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 26 - Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

Respondent's failure to provide the Lynns with an accounting, despite their requests at numerous times, constituted a willful violation by him of rule 4-100(B)(3).

Count 27 - Rule 4-100(A)(2) [Failure to Maintain Funds in Client Trust Account]

The State Bar alleges that Respondent's had a duty under rule 4-100(A)(2) to put the disputed fees into his client trust account. The State Bar has failed to present clear authority to show such a duty. (See instead, State Bar Standing Committee on Professional Responsibility and Conduct, Opinion 2006-171.)

This count is dismissed with prejudice.

Count 28 - Rule 3-700(D)(1) [Failure to Release File]

At trial, the State Bar asked that this count be dismissed. At that time the count was dismissed by the court with prejudice.

Case No. 12-O-16230 (McDonald)

At the conclusion of the State Bar's case-in-chief on culpability, the State Bar asked that this case be dismissed in its entirety. At that time this case, consisting of counts 29-32, was dismissed with prejudice.

Case No. 12-O-16515 (Robinson)

In August 2011, Diane Robinson (Robinson) hired Respondent. On or about August 19, 2011, she signed a fee agreement that contained the following language recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The fee agreement provided for an immediate payment of \$3,000 and ongoing monthly payments of \$2,000 while services were ongoing. In this same fee schedule, there was language stating that there was no charge for loan modification services.

Beginning in August 2011, through and until March 2012, Respondent collected and received from Robinson \$6,800.

In late August 2011, Respondent contacted Robinson's lender, notifying it of his representation and requesting certain information and documents relating to Robinson's mortgage loan.

On September 13, 2011, the lender responded to Respondent's requests.

On September 16, 2011, Respondent filed a lawsuit against Robinson's lender.

On September 20, 2011, Respondent filed an application for a TRO against Robinson's lender to stop its foreclosure proceedings. The court denied the application.

On October 19, 2011, Respondent filed a second application for a TRO against Robinson's lender to stop its foreclosure proceedings. The court again denied the application.

On September 20, 2011, Robinson filed a voluntary chapter 13 bankruptcy petition. Her attorney in that matter, if any, was the Law Office of Bruce Janke, rather than Respondent.¹⁷ (Ex. 513, pp. 319, 324, 331.) Respondent's own records, however, make clear that it actively participated in her filing of the petition.

Robinson's bankruptcy petition was dismissed on October 6, 2011.

On February 1, 2012, Respondent filed a request for dismissal, without prejudice, of Robinson's lawsuit. The court granted the request.

Count 33 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of Robinson. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent's retention and required that both an advance payment and ongoing monthly

¹⁷ The parties stipulated that "On September 30, 2011, Respondent filed a bankruptcy petition on behalf of Robinson." Based on the exhibits submitted by the parties and the records of the bankruptcy court, this court rejects that stipulation as mistaken.

payments be made. This fee agreement violated section 2944.7. As discussed above, the language in the fee agreement, suggesting that there is no fee for loan modification work, does not avoid the prohibition of the section.

Respondent's willful violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 34 – Rule 3-110(A) [Failure to Perform with Competence]

In this count the State Bar alleges that Respondent failed to act with competence in the handling of Robinson's matter.

The evidence fails to provide clear and convincing proof of this charge.

Robinson's purpose in hiring Respondent was to be able to avoid a foreclosure sale on her property. During the time that Respondent represented her, his office did that.

The bankruptcy was filed by Robinson. Her December letter makes clear that she was uncomfortable with the bankruptcy because of her many other assets and the effect that it had on her credit and on her other creditors. Nonetheless, it had the effect of postponing a scheduled foreclosure sale. That Robinson elected to allow the petition to be dismissed is neither surprising nor evidence of any incompetence by Respondent.

The lawsuit was also for the purpose of stopping the foreclosure sales and providing leverage for a loan modification. The fact that the court concluded that a TRO would not be issued is not sufficient, without more, to conclude that an attorney's effort to seek it represented an act of incompetence.

Whether Respondent's office sent a loan modification package is disputed and uncertain. Whether Robinson would ever be in a position to qualify for a loan modification is also unclear. Whether the disputed property is her residence or not is also unclear. In any event, the lawsuit was eventually voluntarily dismissed by Robinson – without prejudice.

The State Bar has presented no expert testimony or evidence suggesting that the course of conduct taken by Respondent's office was incompetent or that some other course of conduct was required or would have generated a better result. It has the burden of proof here.

This count is dismissed with prejudice.

Count 35 - Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

Robinson demanded a refund of all of the fees that she had paid Respondent and an accounting. Much later, when an accounting was received, it showed that she was entitled to a partial refund of unearned fees. She contacted the accounting department at Respondent's office and was told that a refund would be made. It never came. She then brought a small claims action against Respondent. Respondent then also disputed the accuracy of the accounting and claimed that no money was owed. That action, however, was stayed when Respondent declared bankruptcy.

Respondent's failure to provide his client with an accurate accounting promptly after it was requested constituted a willful violation of Respondent's obligations under rule 4-100(B)(3).

Count 36 - Rule 4-100(A)(2) [Failure to Maintain Funds in Client Trust Account]

The State Bar alleges that Respondent's had a duty under rule 4-100(A)(2) to put the disputed fees into his client trust account. The State Bar has failed to present clear authority to show such a duty. (See instead, State Bar Standing Committee on Professional Responsibility and Conduct, Opinion 2006-171.)

This count is dismissed with prejudice.

Case No. 12-O-16745 (Olvera)

In April 2011, Luis Olvera and Hyesoon Kim Olvera (the Olveras) hired Respondent. On May 3, 2011, they signed a fee agreement that contained the following language recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

The fee agreement provided for an immediate payment of fees and ongoing payment of fees while services were ongoing.

Between April 2011 and July 2012, Respondent collected and received from the Olveras a total sum of \$17,000.

On April 22, 2011, Respondent filed a bankruptcy petition on behalf of Luis Olvera.

On May 9, 2011, at Respondent's request, the court dismissed Mr. Olvera's bankruptcy petition.

On June 2, 2011, Respondent filed a lawsuit against the Olveras' lender. Respondent also filed an application for a TRO to stop the foreclosure sale of the Olveras' property, which sale was set for June 6, 2011. The court granted the application for a TRO.

Between June 2011 and July 2012, the lender demurred to the Olveras' complaint twice. Each time, the court sustained the demurrer, and Respondent thereafter filed amended

complaints. In July 2012, the lender demurred to the third amended complaint. A hearing on the demurrer was scheduled for August 27, 2012.

On August 6, 2012, Respondent sent to the Olveras a letter of withdrawal of representation, effective immediately.

The Olveras subsequently demanded a refund of fees. Respondent never provided and accounting or any refund of fees.

Count 37 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of the Olveras. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent's retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7. As discussed above, the language in the fee agreement, suggesting that there is no fee for loan modification work, does not avoid the prohibition of the section.

Respondent's violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 38 - Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

In this count the State Bar alleges that Respondent did not earn all of the fees that were received and failed to refund the unearned portions.

The evidence fails to provide clear and convincing proof of this charge. Respondent and his office did substantial work on behalf of the Olveras. The State Bar has offered no evidence or opinion as to the reasonable value of the services that were provided, and Respondent has testified that the work done and value of the services rendered exceeded the fees received.

This count is dismissed with prejudice.

Count 39 - Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

Respondent did not provide the Olveras with an accounting of the fees they had advanced or of the work that had been done to earn those fees. This failure constituted a willful violation by him of rule 4-100(B)(3).

Count 40 - Rule 4-100(A)(2) [Failure to Maintain Funds in Client Trust Account]

The State Bar alleges that Respondent's had a duty under rule 4-100(A)(2) to put the disputed fees into his client trust account. The State Bar has failed to present clear authority to show such a duty. (See instead, State Bar Standing Committee on Professional Responsibility and Conduct, Opinion 2006-171.)

This count is dismissed with prejudice.

Count 41 - Rule 3-700(A)(2) [Improper Withdrawal from Employment]

At trial, the State Bar asked that this count be dismissed. At that time the count was dismissed by the court with prejudice.

Case No. 12-O-16997 (Joo)

On September 20, 2010, Kum Soo Joo (Joo) hired Respondent. On that date he signed a fee agreement that contained the following language recitals:

WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;

WHEREAS Client wishes to employ [Respondent] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; ...

WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call for straight loan modifications only.

Joo made an initial payment of \$7,000 toward the agreement. By September 2011, Respondent had collected and received from Joo a total sum of \$16,000 pursuant to that agreement.

Respondent's office did much work on Joo's behalf to seek a loan modification and to avoid foreclosure.

On March 30, 2011, Respondent filed a chapter 7 bankruptcy petition on behalf of Joo. Respondent filed a declaration in bankruptcy asserting that his compensation for the past year from Joo had only been \$2,701. (Ex. 1043, p. 602.) He did not disclose the full amount of compensation he had received.

On February 8, 2012, Respondent filed a chapter 13 bankruptcy petition on behalf of Joo. Along with the petition, Respondent filed a document in which he asserted that he charged Joo \$3,500 for costs and fees. This was also inaccurate.

Count 42 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of Joo. This court agrees. The fee agreement clearly contemplated that loan modification work would be encompassed within Respondent's retention and required that both an advance payment and ongoing monthly payments be made. This fee agreement violated section 2944.7. As discussed above, the

language in the fee agreement, suggesting that there is no fee for loan modification work, does not avoid the prohibition of the section.

Respondent's willful violation of Civil Code section 2944.7, subdivision (a) is made disciplinable by section 6106.3, subdivision (a) as well as section 6068, subdivision (a). By entering into an agreement for charging and collecting fees in violation of Civil Code section 2944.7, subdivision (a)(1), Respondent entered into an agreement for, charged, and collected an illegal fee.

Count 43 - Section 6106 [Moral Turpitude - Fraudulent Bankruptcy Filing]

Count 44 - Section 6068, subd. (d) [Seeking to Mislead a Judge]

In both of these counts, the State Bar points to the erroneous disclosures filed by Respondent with the bankruptcy court. As discussed previously, Respondent is responsible for these inaccuracies, which were filed under his name as counsel of record by individuals under his supervision and control. Their filing represents a willful violation by Respondent of section 6106 and 6068, subdivision.¹⁸

Count 45 - Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

At trial, the State Bar asked that this count be dismissed. At that time the count was dismissed by the court with prejudice.

Count 46 - Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

At trial, the State Bar asked that this count be dismissed. At that time the count was dismissed by the court with prejudice.

Count 47 - Rule 4-100(A)(2) [Failure to Maintain Funds in Client Trust Account]

¹⁸ Because the facts underlying both charges are identical, only Respondent's culpability of violating section 6106 will be considered in assessing the appropriate discipline in this matter.

At trial, the State Bar asked that this count be dismissed. At that time the count was dismissed by the court with prejudice.

Case No. 12-O-14609 (Yi)

In May 2009, Min Song Yi (Yi) hired Respondent. Yi's mortgage payment were in arrears and he was facing foreclosure.

Between May and September 2009, Respondent collected and received from Yi a total of \$11,750. This was all prior to the enactment of Civil Code section 2944.7. There is no clear and convincing evidence that Yi paid any fees to Respondent after the enactment of section 2944.7.¹⁹

Respondent filed litigation against JP Morgan, a lender, and continued to pursue that case until the eve of trial in April 2011. At that time, when Yi was informed that he would need to advance additional funds for court costs, Yi indicated he was unwilling to do so. At the request of Yi, Respondent's office then negotiated a dismissal of the lawsuit in exchange for a refund of the \$12,000 that Yi had been required to post as a bond for the preliminary injunction that Respondent had previously succeeded in obtaining.

Between May 2009 and May 2011, Respondent made certain requests for information from Yi's lender and certain requests for a loan modification and loan forbearance on behalf of Yi.

On September 15, 2011, Yi's lender denied Yi's request for a mortgage loan modification.

In October 2011, Respondent discussed with Yi the various options then available to him. Yi indicated that he was unwilling to file a bankruptcy petition. As a result, Respondent's office

¹⁹ Yi's testimony regarding the payment of fees after the enactment of section 2944.7 is suspect and unreliable. As an example of such unreliability, he pointed to a \$2,500 payment in September 2010 as a fee he had paid. A review of the documentation for that payment, however, shows it was for a filing fee, rather than legal fees.

then sought to negotiate with the lender a postponement of a scheduled foreclosure sale and a possible loan modification. However, during the middle of that effort, talks broke down when the lender and Respondent's office learned that Yi had just filed a bankruptcy, using a different attorney.

In May 2012, a letter was sent by Respondent's office to Yi, terminating the relationship with Yi. Yi had previously asked for a refund of a portion of his prior fees. In this letter, Respondent's office indicated that no refund was owed. It did not however, provide Yi with an accounting.

Count 48 - Section 6106.3, subd. (a) [Violation of Civil Code §2944.7, subd. (a) - Illegal Advanced Fee]

The State Bar alleges that Respondent violated section 2944.7 by collecting an advanced fee to perform mortgage loan modification services on behalf of Yi.

The evidence fails to provide clear and convincing proof of this charge. The fee agreement was entered into prior to the enactment of section 2944.7, and there is not clear and convincing evidence that any payment of fees was charged, collected, or received by Respondent after the statute was effective.

This count is dismissed with prejudice.

Count 49 – Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

Yi demanded an accounting and a refund of fees. He received neither. Respondent's failure to provide an accounting is a willful violation by him of rule 4-100(B)(3).

Count 50 - Rule 4-100(A)(2) [Failure to Maintain Funds in Client Trust Account]

The State Bar alleges that Respondent's had a duty under rule 4-100(A)(2) to put the disputed fees into his client trust account. The State Bar has failed to present clear authority to

show such a duty. (See instead, State Bar Standing Committee on Professional Responsibility and Conduct, Opinion 2006-171.)

This count is dismissed with prejudice.

Count 51 - Rule 3-700(D)(1) [Failure to Release File]

There is no clear and convincing evidence that Yi ever made a request for his file. At trial, he indicated that he had not talked with Respondent about his files and documents. While he did ask in a letter for copies of records and receipts be provided to justify the fees and costs to be reflected in the expected accounting, that request was not a request to receive his entire file.

This count is dismissed with prejudice.

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)²⁰ The court finds the following with regard to alleged aggravating factors.

Prior Discipline

Multiple Acts of Misconduct

The fact that Respondent is culpable of multiple acts of misconduct is an aggravating factor. (Std. 1.2(b)(ii).)

Significant Harm

Respondent's misconduct significantly harmed his clients and the administration of justice. (Std. 1.2(b)(iv).)

²⁰ All further references to standard(s) or std. are to this source.

Lack of Insight and Remorse

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Despite the prior decisions of this court and the bankruptcy courts, he remains defiant with regard to section 2944.7.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) The court finds the following with regard to mitigating factors.

No Prior Discipline

Respondent was admitted to the practice in 1997 and has no prior record of discipline. This is a significant mitigating factor.

Cooperation

Respondent entered into an extensive stipulation of facts, and at trial he admitted culpability for a few, but not most, of the violations in this case. For that conduct Respondent is entitled to some mitigation. (Std. 1.2(e)(v); see also *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443; cf. *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [credit for stipulating to facts but “very limited” where culpability is denied].)

Character Evidence

Respondent presented testimony from a number of individuals, including community members, former clients, attorneys, and individuals who had worked in his firm during the relevant period. They attested to his good character, his strong work ethic, his desire to obtain good results for his clients, and the success that his firm had accomplished in representing many

other clients. Respondent is entitled to mitigation for this good character evidence. (Std. 1.2(e)(vi).)

Community Service

Respondent presented evidence of his past community service, which is “a mitigating factor that is entitled to ‘considerable weight.’ [Citation.]” (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than 21 years ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *Gary v.*

State Bar (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 2.3, which provides: "Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law."

Respondent has violated his obligations as an attorney to numerous people in a multitude of different ways and over a long period of time. He deposited into his personal coffers many thousands of dollars illegally obtained, money collected from individuals fighting to save their homes from foreclosure. He took on more work than he could handle or adequately supervise, and yet continued to allow practices that violated the prohibitions against misleading the courts and other acts of moral turpitude. While there are many who benefitted from the actions of his firm, their gains do not offset the wrongs for which Respondent is responsible.

The protection of the public, the courts and the profession requires that he be disbarred from the practice of law.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **Gene Wook Choe**, Member No. 187704, be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

Restitution

It is recommended that respondent make restitution to the following clients within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 291):

1. to Noemi Ramirez in the amount of \$10,639.00 plus 10% interest per annum from March 16, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Noemi Ramirez, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
2. to Miguel A. Rodriguez-Parra in the amount of \$3,000.00 plus 10% interest per annum from March 26, 2012 (or to the Client Security Fund to the extent of any payment from the fund to Miguel A. Rodriguez-Parra, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
3. to Lynn Hilden and Susan Hilden in the amount of \$3,281.50 plus 10% interest per annum from January 19, 2012 (or to the Client Security Fund to the extent of any payment from the fund to Lynn Hilden and Susan Hilden, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

4. to Donald Smith in the amount of \$5,880.00 plus 10% interest per annum from October 6, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Donald Smith, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
5. to Yohann Chang and Jung Ok Chang in the amount of \$14,000.00 plus 10% interest per annum from October 11, 2010 (or to the Client Security Fund to the extent of any payment from the fund to Yohann Chang and Jung Ok Chang, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
6. to Maria Mariscal in the amount of \$12,000.00 plus 10% interest per annum from February 7, 2012 (or to the Client Security Fund to the extent of any payment from the fund to Maria Mariscal, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
7. to Victoria Smiser in the amount of \$24,000.00 plus 10% interest per annum from September 22, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Victoria Smiser, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
8. to Icylyn Williams in the amount of \$7,000.00 plus 10% interest per annum from May 1, 2012 (or to the Client Security Fund to the extent of any payment from the fund to Icylyn Williams, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
9. to Tina Youngson and Sang Park in the amount of \$17,500.00 plus 10% interest per annum from August 1, 2010 (or to the Client Security Fund to the extent of

- any payment from the fund to Tina Youngson and Sang Park, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
10. to Jessie Lee and Wilma Pratt in the amount of \$10,500.00 plus 10% interest per annum from November 1, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Jessie Lee and Wilma Pratt, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
 11. to Ki Tae and Kyung Sook Kim in the amount of \$7,750.00 plus 10% interest per annum from July 15, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Ki Tae and Kyung Sook Kim, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
 12. to Hans Weigel in the amount of \$12,000.00 plus 10% interest per annum from November 17, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Hans Weigel, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
 13. to Janet Khachi and Bijan Mikaeli in the amount of \$9,000.00 plus 10% interest per annum from May 1, 2012 (or to the Client Security Fund to the extent of any payment from the fund to Janet Khachi and Bijan Mikaeli, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
 14. to Frank J. Ayre, Jr., and Aida A. Ayre in the amount of \$5,575.00 plus 10% interest per annum from November 19, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Frank J. Ayre, Jr., and Aida A. Ayre, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

15. to Javier Gonzalez in the amount of \$12,200.00 plus 10% interest per annum from February 1, 2012 (or to the Client Security Fund to the extent of any payment from the fund to Javier Gonzalez, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
16. to Michael Lansdale in the amount of \$3,000.00 plus 10% interest per annum from June 29, 2012 (or to the Client Security Fund to the extent of any payment from the fund to Michael Lansdale, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
17. to Diane Robinson in the amount of \$6,800.00 plus 10% interest per annum from August 1, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Diane Robinson, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
18. to Vasilica Vasilescu in the amount of \$2,849 plus 10% interest per annum from November 14, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Vasilica Vasilescu , plus interest and costs, in accordance with Business and Professions Code section 6140.5);
19. to Steven Capuano in the amount of \$12,000 plus 10% interest per annum from July 13, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Steven Capuano , plus interest and costs, in accordance with Business and Professions Code section 6140.5);
20. to Graciela Garcia in the amount of \$1,684.50 plus 10% interest per annum from March 21, 2012 (or to the Client Security Fund to the extent of any payment from

the fund to Graciela Garcia , plus interest and costs, in accordance with Business and Professions Code section 6140.5);

21. to Patricia Herrera in the amount of \$6,000 plus 10% interest per annum from February 1, 2012 (or to the Client Security Fund to the extent of any payment from the fund to Patricia Herrera , plus interest and costs, in accordance with Business and Professions Code section 6140.5);
22. to Edna Parker in the amount of \$9,500 plus 10% interest per annum from November 2, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Edna Parker , plus interest and costs, in accordance with Business and Professions Code section 6140.5);
23. to Kevin Lynn and Janet Lynn in the amount of \$11,075 plus 10% interest per annum from October 1, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Kevin Lynn and Janet Lynn , plus interest and costs, in accordance with Business and Professions Code section 6140.5);
24. to Luis Olvera and Hyesoon Kim Olvera in the amount of \$17,000 plus 10% interest per annum from April 1, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Luis Olvera and Hyesoon Kim Olvera , plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
25. to Kum Soo Joo in the amount of \$16,000 plus 10% interest per annum from September 1, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Kum Soo Joo , plus interest and costs, in accordance with Business and Professions Code section 6140.5).

Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

The court further recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20 and to 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 order in this matter.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds, and such payment is enforceable as provided under Business and Professions Code section 6140.5.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Gene Wook Choe**, Member No. 187704, be involuntarily enrolled as an inactive

member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)²¹

Dated: November _____, 2013.

DONALD F. MILES
Judge of the State Bar Court

²¹ An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or to even hold himself or herself out as entitled to practice law. (*Ibid.*) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)