

ORIGINAL

**State Bar Court of California  
Hearing Department**

**ACTUAL SUSPENSION**

<b>Counsel For The State Bar</b>  Erin McKeown Joyce Senior Trial Counsel 1149 South Hill Street Los Angeles, California 90015 Telephone (213) 765-1356  Bar # 149946	<b>Case Number(s):</b> 11-O-18420 - DFM 12-O-15329 12-O-15874 12-O-17820 12-O-18121	<b>For Court use only</b>  <b>FILED</b>  NOV 26 2013 <i>HC</i>  STATE BAR COURT CLERK'S OFFICE LOS ANGELES
<b>Counsel For Respondent</b>  Steve Henry Lorber Lorber Nelson LLP 12526 High Bluff Drive, Suite 300 San Diego, CA 92130 Telephone (858) 792-3477  Bar # 97287	<b>PUBLIC MATTER</b>	
<b>In the Matter of:</b> <b>LYNDSEY MICHELLE HELLER</b>  Bar # 188234  A Member of the State Bar of California (Respondent)		
<b>Submitted to: Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted June 5, 1997.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 16 pages, not including the order.

*ABD*  
10/30/13



- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - ☐ Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: two (2) billing cycles immediately following the effective date of the Supreme Court Order in this matter. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - ☐ Costs are entirely waived.

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
  - (a) ☐ State Bar Court case # of prior case
  - (b) ☐ Date prior discipline effective
  - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
  - (d) ☐ Degree of prior discipline
  - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.

- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See the Attachment to the Stipulation re Facts, Conclusions of Law and Disposition at page 12.
- (8) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$            on            in restitution to            without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☒ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities. See the Attachment to the Stipulation re Facts, Conclusions of Law and Disposition at page 12.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

- (11) ☒ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct. See the Attachment to the Stipulation re Facts, Conclusions of Law and Disposition at page 13.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

No Prior Discipline - See "Facts Supporting Mitigating Circumstances" in the Attachment to the Stipulation re Facts, Conclusions of Law and Disposition at page 12.

Pre-Filing Stipulation - See "Facts Supporting Mitigating Circumstances" in the Attachment to the Stipulation re Facts, Conclusions of Law and Disposition at page 13.

**D. Discipline:**

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of one (1) year.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:
- (b) ☒ The above-referenced suspension is stayed.
- (2) ☒ **Probation:**
- Respondent must be placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) ☒ **Actual Suspension:**
- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of 60 days.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

### E. Additional Conditions of Probation:

- (1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
  - ☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☒ The following conditions are attached hereto and incorporated:
  - ☐ Substance Abuse Conditions
  - ☐ Medical Conditions
  - ☐ Law Office Management Conditions
  - ☒ Financial Conditions

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

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- ☐ No MPRE recommended. Reason: \_\_\_\_\_
- (2) ☐ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: \_\_\_\_\_
- (5) ☐ **Other Conditions:** \_\_\_\_\_

(Do not write above this line.)

In the Matter of: LYNDSEY MICHELLE HELLER	Case Number(s): 11-O-18420, 12-O-15329, 12-O-15874, 12-O-17820, 12-O-18121
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## Financial Conditions

### a. Restitution

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

Payee	Principal Amount	Interest Accrues From
See Attachment page 15.		

- ☒ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than one (1) year after the effective date of the Supreme Court Order in this matter.

### b. Installment Restitution Payments

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

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

- ☐ If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

### c. Client Funds Certificate

- ☐ 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
  1. the name of such client;
  2. the date, amount and source of all funds received on behalf of such client;
  3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
  4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
  1. the name of such account;
  2. the date, amount and client affected by each debit and credit; and,
  3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

**d. Client Trust Accounting School**

- ☐ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.



**ATTACHMENT TO**

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

IN THE MATTER OF:

LYNDSEY MICHELLE HELLER

CASE NUMBERS:

11-O-18420, 12-O-15329, 12-O-15874, 12-O-17820  
and 12-O-18121

**FACTS AND CONCLUSIONS OF LAW**

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

**Case No. 11-O-18420 (Complainant: Judi Wexler)**

**FACTS:**

1. On May 7, 2010, Judi Wexler hired Respondent to perform residential mortgage loan modification legal services and paid Respondent \$2,500 in advanced attorney fees for those services.
2. Respondent was unsuccessful in obtaining a loan modification acceptable to Wexler.
3. To date, Respondent has not refunded any part of the fee paid to her by Wexler.

**CONCLUSIONS OF LAW:**

4. By collecting an advanced fee to perform mortgage loan modification services on behalf of Wexler in violation of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

**Case No. 12-O-15329 (Complainant: Teresa Lindenmeier)**

**FACTS:**

5. On March 5, 2011, Teresa Lindenmeier hired Respondent to perform residential mortgage loan modification legal services and paid Respondent \$3,500 in advanced attorney fees for those services.
6. Respondent was unsuccessful in obtaining a loan modification acceptable to Lindenmeier.
7. On June 10, 2011, Lindenmeier hired Respondent to file a lawsuit against her lender. Later that month, Respondent filed a lawsuit against Lindenmeier's lender.
8. On September 22, 2011, the lender filed a demurrer. Respondent received notice of the demurrer. The demurrer hearing was scheduled for November 18, 2011. Respondent received notice of the hearing on the demurrer.

9. Respondent did not file an opposition and she did not otherwise respond to the demurrer. Instead, Respondent filed a substitution of attorney in Lindenmeier's lawsuit against her lender on November 8, 2011, substituting in Lindenmeier to represent herself *in propria persona*. Thereafter, the court sustained the demurrer.

10. To date, Respondent has not refunded any part of the fee paid to her by Lindenmeier.

#### CONCLUSIONS OF LAW:

11. By collecting an advanced fee to perform mortgage loan modification services on behalf of Lindenmeier in violation of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

12. By failing to file an opposition or response to the demurrer in Lindenmeier's lawsuit, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rule of Professional Conduct 3-110(A).

#### Case No. 12-O-15874 (Complainant: Pat Magoon)

#### FACTS:

13. In September 2010, Patricia Magoon hired Respondent to perform residential mortgage loan modification legal services and paid Respondent \$2,950 in advanced attorney fees for those services.

14. Respondent was unsuccessful in obtaining a loan modification acceptable to Magoon.

15. On October 7, 2010, Magoon paid Respondent approximately \$9,000 in additional advanced fees to file and pursue a lawsuit against Magoon's lender.

16. On October 25, 2010, Respondent filed a lawsuit against Magoon's lender. Respondent filed a first amended complaint on February 3, 2011, and a second amended complaint on June 30, 2011.

17. On August 11, 2011, the lender filed a demurrer to Magoon's lawsuit. The demurrer hearing was scheduled for October 4, 2011. Respondent received notice of the demurrer and of the hearing on the demurrer.

18. On October 5, 2011, based on the parties' stipulation, Respondent filed a request to continue the hearing on the demurrer to November 18, 2011. The court granted the request and continued the matter to November 18, 2011. Respondent received notice of the continued hearing date for the demurrer.

19. At no time did Respondent file an opposition or otherwise respond to the demurrer on behalf of Magoon.

20. Respondent did not appear at the November 18, 2011 hearing, and she did not otherwise provide any representation for Magoon at the hearing.

21. On November 18, 2011, as a result of Respondent's non-appearance at the hearing and her failure to respond to the demurrer, the court sustained the demurrer without leave to amend.

22. To date, Respondent has not refunded any part of the fee paid to her by Magoon.

#### CONCLUSIONS OF LAW:

23. By collecting an advanced fee to perform mortgage loan modification services on behalf of Magoon in violation of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

24. By failing to file an opposition or response to the demurrer in Magoon's lawsuit, and failing to appear at the continued hearing on the demurrer, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rule of Professional Conduct 3-110(A).

#### Case No. 12-O-17820 (Complainant: Dorcas Peralta)

#### FACTS:

25. On December 27, 2011, Dorcas Peralta, a resident of New York State, hired Respondent to perform loan modification legal services related to the mortgage on her home located in New York. Peralta paid Respondent \$8,000 in advanced attorney fees.

26. The NY Judiciary Law Section 478, provides, in pertinent part, that "it shall be unlawful for any natural person to practice or appear as an attorney-at-law or as an attorney and counselor-at-law for a person other than himself in a court of record in this state, or to furnish attorneys or counsel or an attorney and counsel to render legal services, or to hold himself out to the public as being entitled to practice law ... without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state[.]"

27. Respondent has never been admitted to practice law in New York.

28. The loan modification services that Respondent undertook to perform on behalf of Peralta in New York constitute the practice of law in New York.

29. To date, Respondent has not refunded any part of the fee paid to her by Peralta.

#### CONCLUSIONS OF LAW:

30. By rendering legal services to Peralta, a resident of New York, regarding her home located in New York without being licensed as an attorney in New York, Respondent practiced law in a jurisdiction where to do so is in violation of the regulations of the profession in that jurisdiction, in wilful violation of Rule of Professional Conduct 1-300(B).

**FACTS:**

31. On March 28, 2011, David and Vickie Wagner hired Respondent to perform residential mortgage loan modification legal services and paid Respondent \$4,500 in advanced attorney fees for those services.

32. Respondent was unsuccessful in obtaining a loan modification acceptable to the Wagners.

33. To date, Respondent has not refunded any part of the fee paid to her by the Wagners.

**CONCLUSIONS OF LAW:**

34. By collecting an advanced fee to perform mortgage loan modification services on behalf of the Wagners in violation of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

**AGGRAVATING CIRCUMSTANCES**

**Multiple Acts of Misconduct (Standard 1.2(b)ii):** Respondent collected advanced fees for loan modification services from five clients (one of whom was a resident of New York), and failed to perform with competence in lender litigation for two of the clients. Respondent thereby engaged in multiple acts of misconduct, which constitutes an aggravating circumstance. (*In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.)

**MITIGATING CIRCUMSTANCES**

**No Prior Discipline:** Respondent was admitted in June 1997, over 13 years before the onset of the misconduct. Even where the underlying misconduct is deemed serious, over 13 years of discipline-free practice should be afforded mitigating weight. (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93) (mitigating credit given for over 12 years of discipline-free practice despite seriousness of misconduct); *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576 (mitigation acknowledged for absence of prior record of discipline in 12 years of practice despite wilful misappropriation of over \$29,000.)

**Emotional/Physical Difficulties (Standard 1.2(e)(iv)):** At the time of the stipulated acts of misconduct, Respondent suffered extreme physical and emotional difficulties stemming from her debilitating back pain which resulted from a traumatic injury. Respondent suffered from the extreme back pain for several years before agreeing to surgery, since the surgery posed significant health risks and would require a long period of recovery and disability following the surgery during which Respondent could not work. Her constant pain in the time period from 2010 through 2011 distracted her from her practice, and led her to neglect the two lender lawsuits she filed for Lindenmeier and Magoon.

Respondent underwent surgery in late 2012. Respondent's successful treatment for her medical condition, and the passage of time have restored her to the practice of law without further adverse impact from this stress. Mitigating weight may be given even where no expert evidence is given to

establish an emotional difficulty or physical disability was “directly responsible” for the misconduct, where there are facts supporting that that condition impaired the respondent’s judgment and affected her ability to deal appropriately with the stress created. (*In re Brown* (1995) 12 Cal.4th 205, 222.)

**Good Character (Standard 1.2(e)(vi)):** Respondent’s good character has been attested by a wide range of references from the legal and general communities who are fully aware of Respondent’s misconduct in connection with these matters. Respondent submitted the character letters of two reputable attorneys and six community members familiar with her misconduct. (See *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171.) Respondent has established that she is entitled to mitigating credit for her demonstration of good character.

**Pretrial Stipulation:** Respondent met with the State Bar trial counsel, admitted her misconduct, and entered this stipulation fully resolving these matters. Respondent’s cooperation has saved the State Bar significant resources and time. Respondent’s stipulation to the facts, culpability, and discipline is a mitigating circumstance. (See *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521; *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 (where mitigating credit was given for entering into a stipulation as to facts and culpability).)

## AUTHORITIES SUPPORTING DISCIPLINE

The Standards for Attorney Sanctions for Professional Misconduct provide a “process of fixing discipline” pursuant to a set of written principles to “better discharge the purposes of attorney discipline as announced by the Supreme Court.” (Rules of Procedure of State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.” (*In re Morse* (1995) 11 Cal.4th 184, 205; standard 1.3.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.)

The gravamen of Respondent’s misconduct is her repeated violation of Business and Professions Code section 6106.3 – collecting advanced fees for loan modification services. Additionally in the Peralta matter, Respondent engaged in the practice of law in a state in which she was not entitled to practice, and in the Lindenmeier and Magoon matters, Respondent failed to perform with competence in her clients’ lender litigation.

Respondent has acknowledged four violations of Business and Professions Code section 6106.3, one violation of Rule of Professional Conduct 1-300(B), and two violations of Rule of Professional Conduct 3-110(A). She committed seven acts of professional misconduct in five client matters. Standard 1.6 (a) requires that where a Respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the most severe prescribed in the applicable standards.

The most severe sanction applicable to Respondent's misconduct is found in Standard 2.10, which applies to Respondent's repeated violations of Business and Professions Code section 6106.3. Under Standard 2.10, which provides the level of discipline range for offenses involving a violation of the Business and Professions Code or Rules of Professional Conduct not specified in any other standard, "[c]ulpability ... shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3."

In considering the extent of the misconduct, Respondent's misconduct spanned a 20-month period from May 2010 to December 2011, and involved five clients. Moreover, Respondent's misconduct is serious. Respondent has repeatedly violated Business and Professions Code section 6106.3 by accepting advanced fees for loan modification services in violation of Civil Code section 2944.7. All of the loan modification clients hired Respondent substantially after the effective date of Civil Code section 2944.7, October 11, 2009.

In considering the degree of harm to the clients, the four California clients who hired Respondent for loan modification services have not received refunds of the advanced fees collected by Respondent in violation of Business and Profession Code section 6106.3, and Peralta has not received a refund of the advanced fees he paid for legal services that Respondent was not entitled to perform. Thus, the extent of misconduct is great and the harm to the clients has been significant.

The aggravating and mitigating circumstances must also be considered. In aggravation are Respondent's multiple acts of misconduct. In mitigation, Respondent's misconduct relating to her mishandling of the two lender litigation matters began at the time of significant stress in Respondent's personal life, since she was suffering from debilitating back pain which eventually required surgery and lengthy period of recovery during which she could not work. Because to the risks of the surgery and expected period of disability, Respondent delayed the surgery, but continued to suffer significant pain which interfered with her ability to practice during the time period of the misconduct.

Respondent has also demonstrated good character, which is recognized mitigation under Standard 1.2(e)(iv). Moreover, Respondent has fully cooperated with the State Bar to resolve these matters with this stipulation. Further, even though the misconduct here is serious, before all the misconduct considered here began, Respondent had no record of discipline in over 13 years of practice.

In a recent Review Department case, *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, the respondent attorney was found culpable of violating Civil Code section 2944.7 and collecting illegal and unconscionable fees in eight client matters, and was suspended for six months. In *Taylor*, the respondent attorney had not paid full refunds to any of the clients. He was found to have engaged in multiple acts of misconduct, causing significant harm to his clients and displaying indifference toward rectification or atonement for his misconduct. By contrast, Respondent's misconduct was more limited than the misconduct of the respondent attorney in *Taylor*, and less serious. Respondent has established substantial mitigation for good character, a pretrial stipulation and extreme physical difficulties. Accordingly, a level of discipline lower than that imposed in *Taylor* is appropriate.

Following Standard 2.10 and considering the totality of the misconduct, particularly in light of the extent of the misconduct and degree of harm to the clients, and considering the aggravating and mitigating circumstances, the appropriate level of discipline is 60 days of actual suspension, and until restitution is paid to Respondent's clients. Imposition of a 60-day actual suspension will be sufficient to protect the

public, the courts and the legal profession under Standard 1.3, and falls squarely within the Standards for discipline in these matters.

### **FINANCIAL CONDITIONS**

These financial conditions are continued from the Financial Conditions form (pages 7 and 8). Respondent must pay the following restitution on the same terms as set forth on the Financial Conditions page 7 to the following payees:

1. Judi Wexler, \$2,500 principal, with interest accruing from May 7, 2010.
2. Teresa Lindenmeier, \$3,500 principal, with interest accruing from March 5, 2011.
3. Patricia Magoon, \$2,950 principal, with interest accruing from September 30, 2010.
4. Dorcas Peralta, \$8,000 principal, with interest accruing from December 27, 2011.
5. David and Vickie Wagner, \$4,500 principal, with interest accruing from March 28, 2011.

### **COSTS OF DISCIPLINARY PROCEEDINGS**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 3, 2013, the prosecution costs in this matter are \$7,186. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

### **EXCLUSION FROM MCLE CREDIT**

Pursuant to Rule of Procedure 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School.

(Do not write above this line.)

In the Matter of:  
LYNDSEY MICHELLE HELLER

Case number(s):  
11-O-18420, 12-O-15329, 12-O-15874,  
12-O-17820, 12-O-18121

### SIGNATURE OF THE PARTIES

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

10/30/13  
Date

Respondent's Signature

Lyndsey Michelle Heller

Print Name

10/30/13  
Date

Respondent's Counsel Signature

Steve Henry Lorber

Print Name

October 31, 2013  
Date

Deputy Trial Counsel's Signature

Erin McKeown Joyce

Print Name



(Do not write above this line.)

In the Matter of:  
LYNDSEY MICHELLE HELLER

Case Number(s):  
11-O-18420, 12-O-15329, 12-O-15874,  
12-O-17820, 12-O-18121

### ACTUAL SUSPENSION ORDER

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

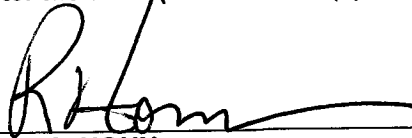
- ☐ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

SEE ATTACHED MODIFICATION

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date.** (See rule 9.18(a), California Rules of Court.)

Date

11/22/13

  
RICHARD A. HONN  
Judge of the State Bar Court

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

IN THE MATTER OF:

LYNDSEY MICHELLE HELLER

CASE NUMBERS:

11-O-18420, 12-O-15329, 12-O-15874,  
12-O-17820, 12-O-18121

The following modifications to the Stipulation are recommended:

1. On page 12 of the Stipulation, "Multiple Acts of Misconduct (Standard 1.2(b)ii)," that the first sentence is modified (1) to change "five clients" to "four clients," and the word "matters" is inserted thereafter; and (2) to delete "(one of whom was a resident of New York)" so that the sentence will state that "Respondent collected advanced fees for loan modification services from four client matters . . . ."
2. On page 14, paragraph 7, line 3, the comma after "suspension" is deleted and in its place is inserted a period. In addition, at lines 3-4, "and until restitution is paid to Respondent's clients" is deleted.
3. On page 15, under the heading "Exclusion From MCLE Credits," line 2, "or the MPRE" is added after "School."

## CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 26, 2013, I deposited a true copy of the following document(s):

### STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION

in a sealed envelope for collection and mailing on that date as follows:


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

**STEVE HENRY LORBER  
LORBER NELSON LLP  
12526 HIGH BLUFF DR STE 300  
SAN DIEGO, CA 92130**

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

**ERIN JOYCE, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 26, 2013.

  
\_\_\_\_\_  
Tammy Cleaver  
Case Administrator  
State Bar Court