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State Bar Court of California

Hearing Department
Los Angeles
ACTUAL SUSPENSION

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Erin McKeown Joyce Senior Trial Counsel State Bar of California 1149 South Hill Street Los Angeles, CA 90015-2299 Telephone (213) 765-1356</p> <p>Bar # 149946</p>	<p>Case Number(s): 12-O-10262-RAH 12-O-11155 12-O-11926 12-O-13437 12-O-13523 12-O-14139 12-O-14205 12-O-15682 12-O-17836 13-O-10458 13-O-10599 13-O-10615 13-O-10793 (Inv) 13-O-12059 (Inv) 13-O-12639 (Inv)</p>	<p>For Court use only</p> <p>FILED</p> <p>JUL 11 2013</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Arthur L. Margolis Margolis & Margolis LLP 2000 Riverside Drive Los Angeles, CA 90039 Telephone (323) 953-8996</p> <p>Bar # 57703</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: ARMEN JANIAN</p> <p>Bar # 102747</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 10, 1982.
- (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.

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- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 20 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (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 10-O-11007, 11-O-11995, 11-O-14653, 11-O-18086.
 - (b) Date prior discipline effective June 21, 2012.
 - (c) Rules of Professional Conduct/ State Bar Act violations: Four counts of violating Business and Professions Code 6106.3 (Collecting advanced fees in loan modification cases). See the Attachment to the Stipulation re Facts, Conclusions of Law and Disposition at page 14.
 - (d) Degree of prior discipline One year stayed suspension; two years' probation.
 - (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.

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- (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 14.
- (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 15.

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- (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 15.
- (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:

See the Attachment to the Stipulation re Facts, Conclusions of Law and Disposition at page 16 for additional mitigating circumstances.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of two (2) years.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.
- (2) **Probation:**
- Respondent must be placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) **Actual Suspension:**
- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of six (6) months.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

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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:

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- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> 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:**

If Respondent completes State Bar Ethics School and provides proof of passage of the Multistate Professional Responsibility Exam as required in connection with Case Nos. 10-O-11007, 11-O-11995, 11-O-14653, 11-O-18086, prior to the effective date of the discipline herein, Respondent will be deemed to have fulfilled those requirements in this stipulation. (See In the Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181).

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In the Matter of: ARMEN JANIAN	Case Number(s): 12-O-10262, 12-O-11155, 12-O-11926, 12-O-13437, 12-O-13523, 12-O-14139, 12-O-14205, 12-O-15682, 12-O-17836, 13-O-10458, 13-O-10599, 13-O-10615 13-O-10793, 13-O-12059, 13-O-12639
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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
Attachment pages 18 and 19.		

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than Pursuant to the actual suspension provision on page 4, Respondent will remain suspended

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:

ARMEN JANIAN

CASE NUMBERS:

12-O-10262, 12-O-11155, 12-O-11926, 12-O-13437
12-O-13523, 12-O-14139, 12-O-14205, 12-O-15682
12-O-17836, 13-O-10458, 13-O-10599, 13-O-10615
13-O-10793, 13-O-12059, 13-O-12639

FACTS AND CONCLUSIONS OF LAW

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

General Background

1. In 2009, Respondent set up a loan modification practice in his law firm.
2. After the effective date of Civil Code section 2944.7 in October 2009, which prohibits accepting advanced fees for loan modification services, Respondent continued to take on loan modification clients for advanced fees up to August 2010. In August 2010 Respondent stopped accepting any new loan modification clients.
3. After August 2010, Respondent continued to service his existing loan modification clients for no additional fees.

Case No. 12-O-10262 (Complainants: Dennis and Kimberly Newcombe)

FACTS:

4. On March 2, 2010, Dennis and Kimberly Newcombe hired Respondent for a mortgage loan modification on their home and paid Respondent an advanced fee of \$2,900.
5. Respondent performed substantial legal services for the Newcombes, but was unsuccessful in obtaining a loan modification acceptable to his clients.

CONCLUSIONS OF LAW:

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

Case No. 12-O-11155 (Complainant: Patrick Schur)

FACTS:

7. On April 1, 2010, Patrick Schur hired Respondent for mortgage loan modifications on two of his properties and paid Respondent an advanced fee of \$3,000 for each property, for a total of \$6,000.

8. Respondent performed substantial legal services for Schur, but was unsuccessful in obtaining a loan modification acceptable to his client.

CONCLUSIONS OF LAW:

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

Case No. 12-O-11926 (Complainant: Elizabeth Irwin)

FACTS:

10. On April 9, 2010, Elizabeth Irwin hired Respondent for a mortgage loan modification on her home and paid Respondent an advanced fee of \$2,000.

11. Respondent performed substantial legal services for Irwin, but was unsuccessful in obtaining a loan modification acceptable to his client.

12. Respondent subsequently provided a full refund to Irwin.

CONCLUSIONS OF LAW:

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

Case No. 12-O-13437 (Complainant: Barbara Plocica)

FACTS:

14. On June 4, 2010, Barbara Plocica hired Respondent for a mortgage loan modification on her home and paid Respondent an advanced fee of \$2,500.

15. Respondent performed substantial legal services for Plocica, but was unsuccessful in obtaining a loan modification acceptable to his client.

CONCLUSIONS OF LAW:

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

Case No. 12-O-13523: (Complainants Isaac and Rebecca Trevino)

FACTS:

17. In March 2010, Isaac and Rebecca Trevino hired Respondent for a mortgage loan modification on their home and paid Respondent an advanced fee of \$2,900.

18. Respondent performed substantial legal services for the Trevinos, but was unsuccessful in obtaining a loan modification acceptable to his clients.

CONCLUSIONS OF LAW:

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

Case No. 12-O-14139 (Complainant: Mohammed Fata)

FACTS:

20. On March 2, 2010, Mohammed Fata hired Respondent for a mortgage loan modification on his home and paid Respondent an advanced fee of \$3,000.

21. Respondent performed substantial legal services for Fata, but was unsuccessful in obtaining a loan modification acceptable to his client.

CONCLUSIONS OF LAW:

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

Case No. 12-O-14205 (Complainant: Kazim Rajabi)

FACTS:

1. On December 7, 2009, Kazim Rajabi hired Respondent for a mortgage loan modification on his home and paid Respondent an advanced fee of \$3,000.

2. Respondent performed substantial legal services for Rajabi, but was unsuccessful in obtaining a loan modification acceptable to his client.

CONCLUSIONS OF LAW:

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

Case No. 12-O-15682 (Complainant: Filomena Correia)

FACTS:

4. On January 28, 2010, Filomena Correia hired Respondent for a mortgage loan modification on her home and paid Respondent an advanced fee of \$2,900.

5. Respondent performed substantial legal services for Correia, but was unsuccessful in obtaining a loan modification acceptable to his client.

CONCLUSIONS OF LAW:

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

Case No. 12-O-17836 (Complainant: Corey Narog)

FACTS:

7. On July 9, 2010, Corey Narog hired Respondent for a mortgage loan modification on his home and paid Respondent an advanced fee of \$3,000.

8. Respondent performed substantial legal services for Narog, but was unsuccessful in obtaining a loan modification acceptable to his client.

CONCLUSIONS OF LAW:

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

Case No. 13-O-10458 (Complainant: Brenda Longalong)

FACTS:

10. On July 27, 2010, Brenda Longalong hired Respondent for a mortgage loan modification on her home and paid Respondent an advanced fee of \$3,000.

11. Respondent performed substantial legal services for Longalong, but was unsuccessful in obtaining a loan modification acceptable to his client.

CONCLUSIONS OF LAW:

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

Case No. 13-O-10599 (Complainant: Sandra Dos Santos)

FACTS:

13. On May 6, 2010, Sandra Dos Santos hired Respondent for a mortgage loan modification on her home and paid Respondent an advanced fee of \$3,030.

14. Respondent performed substantial legal services for Dos Santos, but was unsuccessful in obtaining a loan modification acceptable to his client.

CONCLUSIONS OF LAW:

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

Case No. 13-O-10615 (Complainants: Atrun and Vijendra Prasad)

FACTS:

16. On January 29, 2010, Atrun and Vijendra Prasad hired Respondent for a mortgage loan modification on their home and paid Respondent an advanced fee of \$3,500.

17. Respondent performed substantial legal services for the Prasads, but was unsuccessful in obtaining a loan modification acceptable to his clients.

CONCLUSIONS OF LAW:

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

Case No. 13-O-10793 (Complainant: Wayne Elliot)

FACTS:

19. On April 4, 2010, Wayne Elliott hired Respondent for a mortgage loan modification on his home and paid Respondent an advanced fee of \$2,500.

20. Respondent performed substantial legal services for Elliott, but was unsuccessful in obtaining a loan modification acceptable to his client.

CONCLUSIONS OF LAW:

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

Case No. 13-O-12059 (Complainant: Aaron Molyneux)

FACTS:

22. On November 30, 2009, Aaron Molyneux hired Respondent for a mortgage loan modification on his home and paid Respondent an advanced fee of \$2,900.

23. Respondent performed substantial legal services for Molyneux, but was unsuccessful in obtaining a loan modification acceptable to his client.

CONCLUSIONS OF LAW:

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

Case No. 13-O-12639 (Complainants: Wilkie and Tracey Lemieux)

FACTS:

25. On December 28, 2009, Wilkie and Tracey Lemieux hired Respondent for a mortgage loan modification on their home and paid Respondent an advanced fee of \$3,000.

26. Respondent performed substantial legal services for the Lemieuxes, but was unsuccessful in obtaining a loan modification acceptable to his clients.

CONCLUSIONS OF LAW:

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

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES

Prior Record of Discipline (Std. 1.2(b)(i)): Effective June 21, 2012, Respondent was suspended from the practice of law for one year, which was stayed, stemming from four violations of Business and Professions Code section 6106.3, for collecting advanced fees in loan modification cases in the time period from the end of 2009 through March 2010.

Multiple Acts of Misconduct (Std. 1.2(b)(ii)): Respondent's conduct in the matters comprising this disciplinary stipulation, and his conduct in the four client matters which were the basis of the prior discipline, which all occurred during the same time period as the present misconduct, evidence multiple

acts of misconduct. Standard 1.2(b)(ii). (*In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.)

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES

Emotional/Physical Difficulties (Std. 1.2(e)(iv)): At the time of the stipulated acts of misconduct, Respondent suffered extreme emotional difficulties stemming from his diagnosis of prostate cancer in February 2009. Respondent underwent multiple invasive medical tests from February 2009 until September 2009, to diagnose his condition, which initially was diagnosed as prostate cancer. Later, in September 2009 Respondent underwent a surgical procedure to correct what was finally determined to be a right inguinal hernia. He was later cleared of having prostate cancer, and correctly diagnosed with a bacterial infection which responded to a month long course of strong antibiotics.

Respondent's emotional difficulties stemming from his incorrect cancer diagnosis distracted him from his practice and contributed to his failure to comply with California Civil Code section 2944.7 when it was initially implemented. Respondent modified his attorney client agreements in response to the new law in late 2009 to provide for payment of advanced fees in phases, which he acknowledges did not comply with the law. By August 2010, the full implication of Civil Code section 2944.7 were clear to Respondent, and he ceased his loan modification operation in its entirety, but continued to service his existing clients for no additional fees to help them obtain loan modifications.

Respondent's successful treatment for his medical conditions once properly diagnosed, and the passage of time have restored him 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 his ability to deal appropriately with the stress created. (*In re Brown* (1995) 12 Cal.4th 205, 222.)

Good Character (Std. 1.2(e)(vi)): Respondent provided evidence of multiple awards he has received from a variety of government agencies and civic organizations which have recognized Respondent for his dedicated service to the community, including the County of Los Angeles, the City of Glendale, the California State Legislature, Congressman Adam B. Schiff, the YMCA, the California Assembly, the Armenian Chamber of Commerce, the Russian Academy of Natural Sciences, the City of Los Angeles, the Armenian American Chamber of Commerce, the Armenian Bone Marrow Donor Registry Charitable Trust and Glendale Adventist Hospital.

Respondent has spent hundreds of hours volunteering for different agencies and community organizations both in the legal field and in the wider community. He served on the Community - Police Partnership Advisory Committee of the City of Glendale, the board of the Glendale Memorial Hospital Foundation, the City of Glendale Community Development Block Grant Committee, the board of the Glendale Chamber of Commerce, the Armenian American Political Action Committee, the board of the Armenian Relief Center and the board of the Armenian American Chamber of Commerce.

Respondent's good character has also been attested by a wide range of distinguished members of the legal and general communities who are fully aware of Respondent's misconduct in connection with his loan modification operation. (See *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171.) Respondent has established that he is entitled to mitigating credit for an extraordinary demonstration of good character.

Pretrial Stipulation: Respondent met with the State Bar, admitted his misconduct, and entered this stipulation fully resolving these matters. Respondent's cooperation at this early stage has saved the State Bar significant resources and time. Respondent's stipulation to the facts, his culpability, and discipline is a mitigating circumstance. (*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 mitigative 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 Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. 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; std. 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 Silvertown* (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.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Generally, the Standards are applied to only the misconduct in the current matters to determine the appropriate level of discipline; however, in certain situations, the misconduct from the prior discipline and the misconduct in the current matters should be considered together in determining discipline.

The reasoning for considering the prior discipline and the current misconduct together to determine the appropriate level of discipline is set forth in *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. In *Sklar*, the attorney had prior discipline and was involved in a second disciplinary proceeding involving misconduct which occurred during the same time period as his prior discipline. The court acknowledged that "... part of the rationale for considering a prior discipline as having an aggravating impact is that it is indicative of a recidivist attorney's inability to conform his or her conduct to ethical norms [citation]. It is therefore appropriate to consider the fact that the misconduct involved here was contemporaneous with the misconduct in the prior case." (*In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. at 619.) *Sklar* concluded that it was appropriate to consider the totality of the misconduct in the attorney's prior discipline and the pending matters to determine what discipline was appropriate had all the misconduct been brought together rather than separately.

A similar rationale and application is appropriate here. Respondent's misconduct in the current matters occurred at the same time as the misconduct in his prior discipline. Rather than considering a strict application of the standards to the current misconduct as if it was subsequent and further misconduct committed by an attorney displaying an inability to conform his conduct to ethical norms, it is appropriate to consider the current misconduct together with his prior misconduct which all occurred during the same time period.

The gravamen of Respondent's misconduct is his repeated violation of Business and Professions Code section 6106.3 – collecting advanced fees for loan modification services. Respondent stopped all loan modification work no later than August 2010.

The appropriate Standard to employ to assess Respondent's misconduct is Standard 2.10. Under Standard 2.10, which provides the level of discipline range for offenses involving a violation of the Business and Professions Code not specified in any other standard, “[c]ulpability of a member of a violation of an provision of the Business and Professions Code not specified in these standards . . . 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 occurred in the limited time span of late 2009 through August 2010, when he ceased his loan modification operation in its entirety. After that time period, Respondent collected no additional fees from his loan modification clients, but continued to work on their cases to obtain loan modifications for his clients.

It is acknowledged that Respondent's misconduct is serious. Respondent has repeatedly violated Business and Professions Code section 6106.3 by accepting advanced fees ranging from \$2,000 to \$7,000 for loan modification services in violation of Civil Code section 2944.7. All of the clients hired Respondent after the effective date of Civil Code section 2944.7, October 11, 2009.

In the four matters in the prior discipline, Respondent stipulated to violating Business and Professions Code section 6106.3 by accepting advanced fees ranging from approximately \$3,500 to \$4,500 after the effective date of Civil Code section 2944.7 for loan modification services. Respondent refunded all advanced fees to the clients in the first discipline. In Case No. 10-O-11007, Venus Pagsuberon hired Respondent in March 2010. In Case No. 11-O-11995, Rick Schoonover hired Respondent in October 2009 (after the effective date of Civil Code section 2944.7). In Case No. 11-O-14653, Timothy Infanger hired Respondent in October 2009 (after the effective date of Civil Code section 2944.7). In Case No. 11-O-18086, Rhonda Gower hired Respondent in January 2010.

The fifteen clients in the current stipulation all hired Respondent in the time period from October 2009 (after the effective date of Civil Code section 2944.7) through July 2010. Respondent stopped taking on new loan modification clients after August 2010. The number of affected clients is significant and the misconduct is serious.

In considering the degree of harm to the clients, in the prior discipline matters all clients received full refunds, so the harm to those clients was significantly mitigated. In the current matters however, all of the clients except Irwin are awaiting refunds. So even though Respondent performed significant services for all of his clients, the harm resulting from improperly collecting advanced fees from these clients is serious. The extent of the misconduct was limited to a discrete time period, but the harm to the clients is significant.

The aggravating and mitigating circumstances must also be considered. In aggravation are Respondent's multiple acts and his prior discipline. Prior discipline should be considered in aggravation “[w]henver discipline is imposed.” (*Lewis v. State Bar* (1973) 9 Cal.3d 704, 715.) However, for the reasons previously set forth, the weight of the prior discipline is diminished in these matters.

In mitigation, Respondent's misconduct began at the time of significant stress in Respondent's personal life, since he had been wrongly diagnosed as having prostate cancer and was undergoing treatment from February 2009 through September 2009. Respondent has also demonstrated extraordinary service to his community and 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 a stipulation. Further, even though the misconduct here is serious, before all the misconduct considered here began, Respondent had no record of discipline in over twenty six 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 spontaneously closed down his loan modification practice in August 2010, when the full implication of Civil Code section 2944.7 was clear to him. He continued to work on his existing clients' matters without additional payment of fees. He provided refunds to many of his clients. His misconduct was limited to the time period from the end of October 2009 to August 2010. His misconduct is less serious than the misconduct of the respondent attorney in *In the Matter of Taylor* and the respondent attorney in *In the Matter of Taylor* was found culpable of sixteen additional charges. Respondent has established substantial mitigation for good character, a pretrial stipulation and extreme emotional difficulties. Accordingly, a level of discipline similar to that imposed in *Taylor* is appropriate notwithstanding the fact that there are more client matters in this stipulation than were involved in the *Taylor* decision.

Following Standard 2.10 and considering the totality of the misconduct considered in the prior and current matters, 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 six (6) months actual suspension for all of Respondent's misconduct in these matters and the prior discipline. Imposition of a six month 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. Dennis and Kimberly Newcombe, \$2,900, with interest accruing from March 2, 2010.
2. Patrick Schur, \$6,000, with interest accruing from April 1, 2010.
3. Barbara Plocica, \$2,500, with interest accruing from June 4, 2010.
4. Isaac and Rebecca Trevino, \$2,900, with interest accruing from March 1, 2010.
5. Mohammed Fata, \$3,000, with interest accruing from March 2, 2010.
6. Kazim Rajabi, \$3,000, with interest accruing from December 7, 2009.
7. Filomena Correia, \$2,900, with interest accruing from January 28, 2010.
8. Corey Narog, \$3,000, with interest accruing from July 9, 2010.
9. Brenda Longalong, \$3,000, with interest accruing from July 27, 2010.
10. Sandra Dos Santos, \$3,030, with interest accruing from May 6, 2010.

11. Atrun and Vijendra Prasad, \$3,500, with interest accruing from January 29, 2010.
12. Wayne Elliott, \$2,500, with interest accruing from April 4, 2010.
13. Aaron Molyneux, \$2,900, with interest accruing from November 30, 2009.
14. Wilkie and Tracy Lemieux, \$3,000, with interest accruing from December 28, 2009.

COSTS

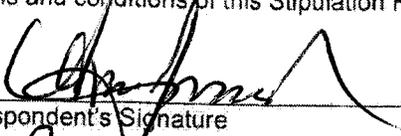
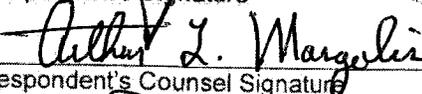
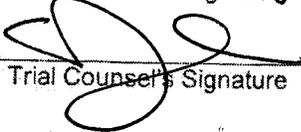
Respondent acknowledges that the Office of Chief Trial Counsel has informed him that as of June 6, 2013, the estimated costs in this matter are \$19,000. Respondent further acknowledges that, should this Stipulation be rejected or should relief from the Stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: ARMEN JANIAN	Case number(s): 12-O-10262, 12-O-11155, 12-O-11926, 12-O-13437, 12-O-13523, 12-O-14139, 12-O-14205, 12-O-15682 12-O-17836, 13-O-10458, 13-O-10599, 13-O-10615 13-O-10793, 13-O-12059, 13-O-12639
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SIGNATURE OF THE PARTIES

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

<u>6/13/13</u> Date	 Respondent's Signature	<u>Armen Janian</u> Print Name
<u>6/17/13</u> Date	 Respondent's Counsel Signature	<u>Arthur L. Margolis</u> Print Name
<u>June 19, 2013</u> Date	 Deputy Trial Counsel's Signature	<u>Erin McKeown Joyce</u> Print Name

(Do not write above this line.)

In the Matter of: ARMEN JANIAN	Case Number(s): 12-O-10262, 12-O-11155, 12-O-11926, 12-O-13437, 12-O-13523, 12-O-14139, 12-O-14205, 12-O-15682, 12-O-17836, 13-O-10458, 13-O-10599, 13-O-10615 13-O-10793, 13-O-12059, 13-O-12639
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ACTUAL SUSPENSION ORDER

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

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

Please see attached modifications to stipulation.

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.)**

07-10-2013
Date


RICHARD A. PLATEL
Judge of the State Bar Court

Armen Janian

Casem No. 12-O-10262, et al.

MODIFICATIONS TO STIPULATION

Page 5 – Section E. (1) – Place check mark in box.

Page 5. – Section E. (8) – Remove check mark from box.

Insert check mark in box “No Ethics School Required.”

Insert after “Reason” –

“Respondent is required to provide proof of his attendance and successful completion of the State Bar Ethics School as a condition of the two-year disciplinary probation that was imposed on him in his prior disciplinary matter (i.e., Supreme Court case number S199678 [State Bar Court case number 10-O-11007, et al.]) If Respondent fails to comply with that Probation condition he is subject to further discipline.

Page 6 – Section F. (1) – Remove check mark from box.

Insert check mark in box “No MPRE Recommended.”

Insert after “Reason” –

“In Respondent’s prior disciplinary matter (Supreme Court case number S199678), the Supreme Court ordered Respondent to take and pass the MPRE within one year after the effective date of its May 22, 2012, order. If Respondent fails to pass the MPRE within that time period, he will be suspended from the practice of law until he does. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8: but see also Cal. Rules of Court, rule 9.10(b); Rules of Proc. of State Bar, rule 5.162.)

Page 6 – Section F.(5) - Delete check mark in box.

Delete text below “Other Conditions.”

-X-X-X-

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 July 11, 2013, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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

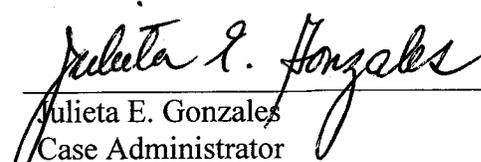
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ARTHUR LEWIS MARGOLIS ESQ
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

Erin M. Joyce, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 11, 2013.



Julieta E. Gonzales
Case Administrator
State Bar Court