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State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

 ORIGINAL

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<p>Counsel For Respondent</p> <p>James R. DiFrank 12227 Philadelphia Street Whittier, CA 90601 Telephone: (562) 789-7734 Facsimile: (562) 789-7735</p> <p>Bar # 105591</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: THOMAS PATRICK HAYS</p> <p>Bar # 153187</p> <p>A Member of the State Bar of California (Respondent)</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 5, 1991.
- (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.

(Effective January 1, 2011)

*2013
12/15/12*



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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 17 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
 - (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. See attachment to stipulation re facts, conclusions of law and disposition at page 12.
- (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 attachment to 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.
- (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.

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- (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. See attachment to stipulation re facts, conclusions of law and disposition at page 12.
- (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.
- (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 12.

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

E. Additional Conditions of Probation:

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

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

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

F. Other Conditions Negotiated by the Parties:

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

The attachment to the stipulation re facts, conclusions of law and disposition comprises pages 9 to 16.

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In the Matter of: THOMAS PATRICK HAYS	Case Number(s): 12-O-11059, 12-O-13225, 12-O-13555 12-O-14643, 12-O-16710, 12-O-16761 12-O-17177
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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 16		

- 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 these matters.

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 reproval), 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:
 - a. 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 THOMAS PATRICK HAYS

CASE NUMBERS: 12-O-11059, 12-O-13225, 12-O-13555, 12-O-14643
 12-O-16710, 12-O-16761 and 12-O-17177

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.

Case No. 12-O-11059

FACTS

1. On March 22, 2011, Michele Cordy hired Respondent for a loan modification on her home in Kentucky. Cordy is a resident of Kentucky.
2. Cordy paid Respondent \$3,500 in advanced legal fees for the loan modification work he was hired to perform.
3. Respondent's office did some preliminary work on securing a loan modification for Cordy. However, Respondent was unable to secure a loan modification on behalf of Cordy.
4. Cordy terminated Respondent and requested a full refund from Respondent.
5. Respondent agreed in his letter to Cordy's new attorney dated November 22, 2011 to pay Cordy a full refund.
6. To date, Respondent has not refunded any monies to Cordy.
7. Kentucky Supreme Court Rule 3.020 defines the practice of law as any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy, in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services.
8. Loan modification services constitute the practice of law in Kentucky.
9. Respondent is not admitted to practice law in Kentucky.
10. No attorney employed by Respondent who worked on Cordy's legal matter was admitted to practice law in Kentucky.
11. Respondent was not authorized to charge legal fees for the loan modification work he performed for Cordy in Kentucky.

CONCLUSIONS OF LAW

12. By performing loan modifications services for Cordy, Respondent practiced law in a jurisdiction where practicing is in violation of the regulations of the profession in that jurisdiction in wilful violation of Rule of Professional Conduct 1-300(B).

13. By charging and collecting an illegal fee from Cordy, Respondent willfully violated Rule of Professional Conduct 4-200(A).

Case No. 12-O-13225

FACTS

14. The effective date of California Civil Code section 2944.7 was October 11, 2009.

15. On December 22, 2010, Respondent established Triton Law Group, PC, specifically for the purposes of offering loan modification services.

16. From December 22, 2010 through at least June 25, 2011, Respondent offered loan modification services as Triton.

17. Respondent ceased operating Triton as of June 25, 2011.

18. Respondent accepted advanced fees for loan modification services from at least three (3) clients who resided in California in the time period from December 22, 2010 through June 25, 2011, when he closed Triton, as follows:

- a. Respondent accepted advanced fees of \$1,497 from William Durkin for loan modification services in the time period May 2011 through June 2011;
- b. Respondent accepted advanced fees of \$2,371 from Edgardo and Mariza Gatdula for loan modification services in the time period May 2011 through June 2011;
- c. Respondent accepted advanced fees of \$5,000 from David McGarigle for loan modification services in the time period May 2011 through June 2011;

CONCLUSIONS OF LAW

19. By collecting advanced fees to perform mortgage loan modification services on behalf of at least three (3) California clients after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

Case No. 12-O-13555

FACTS

20. Paragraph 14 is incorporated by reference as though fully set forth at length.

21. On January 31, 2011, Rudolf Hawkins hired Respondent for a loan modification.
22. Hawkins paid Respondent an advanced fee of \$3,495.

CONCLUSIONS OF LAW

23. By collecting an advanced fee to perform mortgage loan modification services on behalf of Hawkins after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

Case No. 12-O-14643

FACTS

1. Paragraph 14 is incorporated by reference as though fully set forth at length.
2. In December 2010, Lisette Pelletier hired Respondent for a loan modification.
3. Pelletier paid Respondent an advanced fee of \$2,800.

CONCLUSIONS OF LAW

4. By collecting an advanced fee to perform mortgage loan modification services on behalf of Pelletier after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

Case No. 12-O-16710

FACTS

5. Paragraph 14 is incorporated by reference as though fully set forth at length.
6. In February 2011, Chris Cook hired Respondent for a loan modification.
7. Cook paid Respondent an advanced fee of \$1,378.

CONCLUSIONS OF LAW

8. By collecting an advanced fee to perform mortgage loan modification services on behalf of Cook after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

Case No. 12-O-16761

FACTS

9. Paragraph 14 is incorporated by reference as though fully set forth at length.
10. In May 2011, Diana Newby hired Respondent for a loan modification.

11. Newby paid Respondent an advanced fee of \$3,495.

CONCLUSIONS OF LAW

12. By collecting an advanced fee to perform mortgage loan modification services on behalf of Newby after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

Case No. 12-O-17177

FACTS

13. Paragraph 14 is incorporated by reference as though fully set forth at length.
14. In January 2011, Walter and Carole Watters hired Respondent for a loan modification.
15. The Watterses paid Respondent an advanced fee of \$2,524.

CONCLUSIONS OF LAW

16. By collecting an advanced fee to perform mortgage loan modification services on behalf of the Watters after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES

Harm

Respondent took advantage of the distressed homeowner clients he represented in loan modifications, and repeatedly collected upfront fees in violation of Civil Code section 2944.7. The clients have been significantly harmed since they still have not received refunds of the advanced fees they should never have been charged in the first place. *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233 (failure to repay monies owed to the client was aggravating circumstance); *see also, In the Matter of Harney* (Review Dept. 1995) (failing to disclose potential applicability the statute limiting fees in a medical malpractice case, which led Respondent to collect an excessive fee, was properly considered as harm to the client in aggravation under Standard 1.2(b)(iv)).

Multiple/Pattern of Misconduct

Respondent's misconduct in the nine client matters which are the subject of this stipulation 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

Family Problems:

From July 2010, when Respondent's ex-wife died unexpectedly, Respondent became embroiled in custody litigation over the couple's two minor children with their maternal grandparents. The litigation finally concluded in August 2011, with Respondent obtaining custody of his two children.

The child custody litigation began immediately prior to and continued through the time period of the misconduct. Respondent's serious family problems distracted him from his practice and contributed to his failure to comply with Civil Code section 2944.7 while he operated Triton. Respondent set up Triton while he was still grieving his ex-wife's death and fully engaged in the child custody litigation. This led him to not fully appreciate the requirements for a loan modification operation set forth in California Civil Code Section 2944.7. Respondent stopped operating Triton by Jun 25, 2011, once he realized his operation was not in compliance with California Civil Code section 2944.7.

Respondent recognized the adverse effects the stress of the death of his ex-wife and the child custody dispute was having in his personal and professional lives. Acting on this recognition, he began counseling with a Marriage and Family Therapist. That counseling gave him the insight and methods to effectively handle the stress resulting from his ex-wife's death and the custody dispute. His counseling and the passage of time have restored him to the practice of law without further adverse impact from this stress. Respondent continues in counseling with his therapist as a preventative measure.

Family problems may be considered in mitigation even absent expert testimony. In *Hunnicutt v. State Bar* (1988) 44 Cal.3d 362, 373-374, mitigation was given where evidence was shown that family problems occurring at the time of the misconduct were since resolved. In *Friedman v. State Bar* (1990) 50 Cal.3d 235, 243, mitigation was given where evidence was shown that at the time of the misconduct the attorney "began to experience marital problems, which subjected him to stress and as a result adversely affected his professional ability." Further, some 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.) As in *Hunnicutt* and *Friedman*, Respondent's family problems subjected him to significant stress and adversely affected his professional judgment and performance which has since been resolved. Some mitigating weight may be given even absent expert testimony as to a direct connection between the two.

No Prior Discipline

Although Respondent's misconduct was serious, Respondent has no prior record of discipline. Respondent was admitted in June 1991, almost twenty years before the onset of the misconduct. Even where the underlying conduct is deemed serious, Respondent's lengthy period of discipline free practice should be afforded mitigating weight. *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 (Review Department gave mitigating credit 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 twelve years of practice despite willful misappropriation of over \$29,000); *In re Brown* (1995) 12 Cal.4th 205, citing *Kelly v. State Bar*,

(1991) 53 Cal.3d 509, 520 and Standard 1.2(e)(i) (where Supreme Court gave substantial mitigating weight to over 20 years of discipline free practice).

Cooperation

Respondent met with the State Bar, cooperated in these investigations, 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 Spaitth* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521.

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 Silvertan* (2005) 36 Cal. 81, 92, quoting *In re Brown* (1995) 12 Cal. 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 his repeated violation of Business and Professions Code section 6106.3 – collecting advanced fees for loan modification services. Additionally in the Cordy matter (Case No. 12-O-11059), Respondent violated Rule of Professional Conduct 1-300(B), by offering loan modification services to a resident of the State of Kentucky, and Rule of Professional Conduct 4-200, and collecting an illegal fee for those services.

Respondent admits to committing eight acts of professional misconduct. 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 more or 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 violation of Rule of Professional Conduct 4-200, collecting an illegal fee, and 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 Rule of Professional Conduct 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 or of a wilful violation of any Rule of Professional Conduct 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 spanned the entire time period he operated Triton, from December 2010 through June 25, 2011, and involved at least nine clients.

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, offering loan modification services in Kentucky in violation of Rule of Professional Conduct 1-300(B) and collecting an illegal fee in the Cordy matter.

All of the clients hired Respondent substantially after the effective date of Civil Code section 2944.7, October 11, 2009. In fact, Respondent set up Triton in December 2010, more than a year after the effective date of Civil Code section 2944.7.

In considering the degree of harm to the clients, the nine clients identified in this stipulation all have not received refunds of the advanced fees collected by Respondent in violation of Business and Profession Code section 6106.3. Thus, the extent of misconduct is great and the harm to the client has been significant.

The aggravating and mitigating circumstances must also be considered. In aggravation are Respondent's multiple acts and the harm to the clients.

In mitigation, Respondent's misconduct began at the time of significant stress in Respondent's personal life, since he had been embroiled in custody litigation over his children with his dead ex-wife's parents from the time period July 2010 through August 2011.

Additionally, 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 almost twenty years of practice.

In a recent Review Department case, *In the Matter of Taylor* (Review Dept. 2012) __ Cal. State Bar Ct. Rptr. __, 2012 WL 5489045 (Cal.Bar Ct.), 2012 Daily Journal D.A.R. 15,482, November 9, 2012, the respondent attorney was found culpable of violating California Civil Code Section 2944.7 and collecting illegal fees in eight client matters. The Review Department recommended that the Respondent be suspended for six months. In *Taylor*, the respondent attorney had not paid full refunds to date 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.

In these matters, Respondent spontaneously closed down his loan modification practice in June 2011, after only seven months, when the full implication of California Civil Code Section 2944.7 was clear to him.

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.

Imposition of a six (6) 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.

PENDING PROCEEDINGS

The disclosure date referred to, on page 2, paragraph A(7), was December 5, 2012.

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties hereby waive any variance between the Notice of Disciplinary Charges filed on September 5, 2012 in Case No. 12-O-11059 and the facts and conclusions of law contained in this stipulation.

FURTHER AGREEMENTS OF THE PARTIES

The factual statements contained in the Stipulation constitute admissions of fact and may not be withdrawn by either party, except with court approval

COSTS

Respondent acknowledges that the Office of Chief Trial Counsel has informed him that as of December 5, 2012, the estimated costs in this matter are \$8,621. 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.

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:

Payee	Principal Amount	Interest Accrues From
Michele Cordy	\$3,500	March 22, 2011
William Durkin	\$1,497	June 30, 2011
Edgardo and Mariza Gatdula	\$2,370	June 30, 2011
David McGarigle	\$5,000	June 30, 2011
Rudolf Hawkins	\$3,495	January 31, 2011
Lisette Pelletier	\$2,800	December 31, 2010
Chris Cook	\$1,378	February 28, 2011
Diana Newby	\$3,495	May 31, 2011
Walter and Carole Watters	\$2,524	January 31, 2011

EXCLUSION FROM MCLE CREDIT

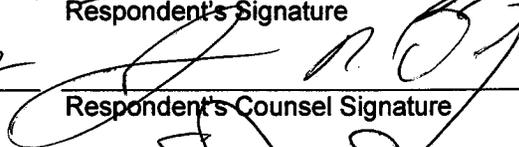
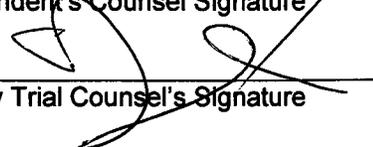
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. Rule of Procedure of the State Bar 3201.

(Do not write above this line.)

In the Matter of: THOMAS PATRICK HAYS	Case number(s): 12-O-11059, 12-O-13225, 12-O-13555, 12-O-14643, 12-O-16710, 12-O-16761, 12-O-17177
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SIGNATURE OF THE PARTIES

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

<u>12-5-2012</u> Date	 Respondent's Signature	<u>Thomas P. Hays</u> Print Name
<u>12/5/12</u> Date	 Respondent's Counsel Signature	<u>James R. DiFrank</u> Print Name
<u>December 5, 2012</u> Date	 Deputy Trial Counsel's Signature	<u>Erin McKeown Joyce</u> Print Name

(Do not write above this line.)

In the Matter of: THOMAS PATRICK HAYS	Case Number(s): 12-O-11059, 12-O-13225, 12-O-13555 12-O-14643, 12-O-16710, 12-O-16761 12-O-17177
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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.

1. On page 4 of the stipulation, paragraph D.(2), "for a period of two (2)" is deleted, and in its place is inserted "for a period of two (2) years".

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

12-21-12

Date



Judge of the State Bar Court
RICHARD A. HONN

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 January 2, 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:

**JAMES RICHARD DIFRANK
12227 PHILADELPHIA ST
WHITTIER, CA 90601 - 3931**

- 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 January 2, 2013.



Tammy Cleaver
Case Administrator
State Bar Court