

PUBLIC MATTER

ORIGINAL

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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Charles T. Calix Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1255 Bar # 146853	Case Number(s): 12-O-15301 - DFM 12-O-15736 12-O-16098 12-O-16215 13-O-11988 13-O-16206 (INV)	For Court use only <div style="text-align: center;"> FILED MAR 27 2014 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Counsel For Respondent M. Cris Armenta The Armenta Law Firm 11900 Olympic Boulevard, Suite 730 Los Angeles, CA 90064 (310) 826-2826 Bar # 177403	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter of: BRIAN JOSEPH KUCSAN Bar # 230951 A Member of the State Bar of California (Respondent)	ACTUAL SUSPENSION <input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 3, 2004**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **15** 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."

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- (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: **the two billing cycles following the effective date of the Supreme Court Order.** (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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline**
- (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 intentional, 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 on page 12.**
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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 on page 12.**
- (8) ☐ **Restitution:** Respondent failed to make restitution.
- (9) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. 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, the public, or the administration of justice.
- (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 with a good faith belief that was honestly held and reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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.

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(12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Discipline. See Attachment on page 13.

Remedial Measures. See Attachment on page 13.

Prefiling Stipulation. See Attachment on page 13.

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 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.

ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

(b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **60 days**.

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), 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 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.

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- (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:
- | | |
|---|---|
| <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

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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:**

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In the Matter of: BRIAN JOSEPH KUCSAN, No. 230951	Case Number(s): 12-O-15301, 12-O-15736, 12-O-16098, 12-O-16215, 13-O-11988, and 13-O-16206
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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
Esperanza Figueroa and Jorge Avina	\$2,900	April 6, 2011
Karen Waters	\$2,900	March 22, 2011

- ☒ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **sixty (60) days following the effective date of the Supreme Court Order..**

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: **BRIAN JOSEPH KUCSAN, No. 230951**

CASE NUMBERS: **12-O-15301, 12-O-15736, 12-O-16098, 12-O-16215,
13-O-11988 and 13-O-16206**

FACTS AND CONCLUSIONS OF LAW.

Brian Joseph Kucsan ("Respondent") admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 12-O-15301 (Complainants: Javed Iqbal and Asea Javed)

FACTS:

1. On November 16, 2011, Javed Iqbal and Asea Javed ("Iqbal and Javed") employed Respondent for home mortgage loan modification services and other loan forbearance services.
2. On November 29, 2011, Iqbal and Javed paid Respondent \$2,250 in advanced attorney's fees.
3. On December 30, 2011, Iqbal and Javed paid Respondent an additional \$650 in advanced attorney's fees.
4. Respondent did not fully perform each and every service he had contracted to perform or represented that he would perform for Iqbal and Javed, prior to December 30, 2011.
5. Respondent refunded the advanced fees paid by Iqbal and Javed after they complained to the State Bar.

CONCLUSIONS OF LAW:

6. By negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a mortgage loan modification or other form of loan forbearance for a fee paid by Iqbal and Javed, and demanding, charging, collecting and receiving fees prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7, Respondent wilfully violated Business and Professions Code section 6106.3.

Case No. 12-O-15736 (Complainant: Dale E. Hardin, Jr.)

FACTS:

7. On March 7, 2012, Dale E. Hardin, Jr. ("Hardin"), employed Respondent for home mortgage loan modification services and other loan forbearance services.
8. On March 12, 2012, Hardin paid Respondent \$750 in advanced attorney's fees.

9. On March 13, 2012, Hardin gave Respondent two checks for additional advanced attorney's fees: a check for \$750 postdated March 17, 2012; and a check for \$750 postdated March 24, 2012.

10. On March 21, 2012, Respondent negotiated and collected the proceeds of the \$750 check postdated March 17, 2012. On April 2, 2012, Respondent negotiated and collected the proceeds of the \$750 check postdated March 24, 2012.

11. On April 27, 2012, Hardin paid Respondent an additional \$650 advanced attorney's fees.

12. Respondent did not fully perform each and every service he had contracted to perform or represented that he would perform for Hardin, prior to April 27, 2012

13. Respondent refunded the advanced fees paid by Hardin after he complained to the State Bar.

CONCLUSIONS OF LAW:

14. By negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a mortgage loan modification or other form of loan forbearance for a fee paid by Hardin, and demanding, charging, collecting and receiving fees prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7, Respondent wilfully violated Business and Professions Code section 6106.3.

Case No. 12-O-16098 (Complainant: Walter Raymundo)

FACTS:

15. On March 16, 2012, Walter Raymundo ("Raymundo") employed Respondent for home mortgage loan modification services and other loan forbearance services.

16. On March 21, 2012, Raymundo paid Respondent \$2,250 in advanced attorney's fees.

17. On April 12, 2012, Raymundo paid Respondent an additional \$650 in advanced attorney's fees.

18. Respondent did not fully perform each and every service he had contracted to perform or represented that he would perform for Raymundo, prior to April 12, 2012.

19. Respondent refunded the advanced fees paid by Raymundo after he complained to the State Bar.

CONCLUSIONS OF LAW:

20. By negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a mortgage loan modification or other form of loan forbearance for a fee paid by Raymundo, and demanding, charging, collecting and receiving fees prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7, Respondent wilfully violated Business and Professions Code section 6106.3.

Case No. 12-O-16215 (Complainant: Karen Waters)

FACTS:

21. On March 18, 2011, Karen Waters ("Waters") employed Respondent for home mortgage loan modification services and other loan forbearance services.

22. On March 22, 2011, Waters paid Respondent \$2,250 in advanced attorney's fees.

23. On April 26, 2011, Waters paid Respondent an additional \$650 in advanced attorney's fees.

24. Respondent did not fully perform each and every service he had contracted to perform or represented that he would perform for Waters, prior to April 26, 2011.

25. On or about January 9, 2012 through Respondent's efforts, Waters' lender offered her a loan modification.

CONCLUSIONS OF LAW:

26. By negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a mortgage loan modification or other form of loan forbearance for a fee paid by Waters, and demanding, charging, collecting and receiving fees prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7, Respondent wilfully violated Business and Professions Code section 6106.3.

Case No. 13-O-11988 (Complainants: Irving and Gloria Duffy)

FACTS:

27. On June 23, 2010, Irving and Gloria Duffy (the "Duffys") employed Respondent for home mortgage loan modification services and other loan forbearance services.

28. On June 23, 2010, the Duffys paid Respondent \$2,250 in advanced attorney's fees.

29. On July 28, 2010, the Duffys paid Respondent an additional \$650 in advanced attorney's fees.

30. Respondent did not fully perform each and every service he had contracted to perform or represented that he would perform for the Duffys, prior to July 28, 2010.

31. On April 19, 2011, the Duffys' lender offered them a loan modification.

32. Respondent refunded the advanced fees paid by the Duffys after they complained to the State Bar.

CONCLUSIONS OF LAW:

33. By negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a mortgage loan modification or other form of loan forbearance for a fee paid by the Duffys, and demanding, charging, collecting and receiving fees prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7, Respondent wilfully violated Business and Professions Code section 6106.3.

Case No. 13-O-16206 (Complainants: Esperanza Figueroa and Jorge Avina)

FACTS:

34. On April 1, 2011, Esperanza Figueroa and Jorge Avina ("Figueroa and Avina") employed Respondent for home mortgage loan modification services and other loan forbearance services.

35. On April 6, 2011, Figueroa and Avina paid Respondent \$2,250 in advanced attorney's fees.

36. On May 26, 2011, Figueroa and Avina paid Respondent an additional \$650 in advanced attorney's fees.

37. Respondent did not fully perform each and every service he had contracted to perform or represented that he would perform for the Figueroa and Avina, prior to May 26, 2011.

38. Figueroa and Avina's lender never offered them a loan modification.

CONCLUSIONS OF LAW:

39. By negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a mortgage loan modification or other form of loan forbearance for a fee paid by Figueroa and Avina, and demanding, charging, collecting and receiving fees prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7, Respondent wilfully violated Business and Professions Code section 6106.3.

AGGRAVATING CIRCUMSTANCES

Harm (Std. 1.5(f)): Respondent harmed his clients by accepting advance attorney's fees in violation of laws enacted to protect the public from fraudulent home mortgage loan modification services and other loan forbearance services, and by depriving those clients of needed funds. (See *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 235.)

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's five violations of Business and Professions Code section 6106.3 [violation of Civil Code section 2944.7(a)(1)] constitute multiple acts of misconduct.

MITIGATING CIRCUMSTANCES

No Prior Discipline: Respondent has no prior record of discipline. However, Respondent had been practicing only six years at the time of the first act of misconduct and the misconduct is deemed serious. Therefore, his lack of prior discipline is not entitled to significant weight. (See *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 67.)

Remedial Measures: In June 2012, following investigation by the State Bar into previous complaints by consumers concerning Respondent's home mortgage loan modification services, the State Bar issued a warning letter to Respondent and Respondent modified his law practice to bring it into compliance with his legal and ethical responsibilities. The six complaints at issue herein involve advance fees charged and collected by Respondent for loan modification services prior to Respondent's receipt of the warning letter and the reformation of his law practice. Remedial measures taken by an attorney to come into compliance with ethical duties may be deemed mitigating. (See *In the Matter of Sullivan* (1997) 3 Cal. State Bar Ct. Rptr. 608, 613.)

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a stipulation prior to trial, thereby conserving the time and resources of the State Bar and State Bar Court. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigation credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Respondent admits to committing multiple acts of professional misconduct by accepting advance attorney's fees of \$2,900 for loan modification services from each of six clients. Standard 2.14 applies to Respondent's violations of Business and Professions Code section 6106.3(a), and states that the appropriate discipline consists of disbarment or actual suspension. Respondent's misconduct in these matters occurred between the time span of June 2010 and April 2012 and he provided full refunds in four of these matters after the clients complained to the State Bar, and the harm to the clients was lessened due to the refunds. (Respondent will pay restitution to the remaining two clients as a condition of discipline to be imposed.)

In aggravation, Respondent engaged in multiple acts of misconduct, and his misconduct harmed his clients. In mitigation, Respondent modified his law practice to conform to his ethical responsibilities when warned by the State Bar, which was after the misconduct herein was committed. Respondent's lack of a prior record of discipline is also entitled to some weight in mitigation.

Following Standard 2.14 and considering the gravity of the misconduct, the harm to Respondent's clients, the aggravating circumstances, and the mitigating circumstances, the imposition of a two-year stayed suspension, two-year probation with conditions, including a 60-day actual suspension will be sufficient to protect the public, courts, and legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 10, 2013, the prosecution costs in these matters are approximately \$7,435. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

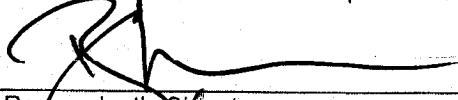
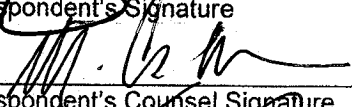
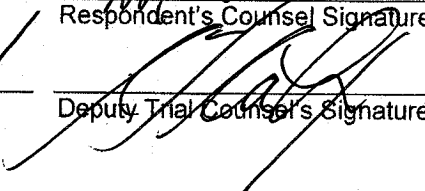
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: BRIAN JOSEPH KUCSAN, No. 230951	Case number(s): 12-O-15301, 12-O-15736, 12-O-16098, 12-O-16215, 13-O-11988, and 13-O-16206
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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.

2/7/14		Brian Joseph Kucsan
Date	Respondent's Signature	Print Name
2/8/14		M. Cris Armenta
Date	Respondent's Counsel Signature	Print Name
3/14/14		Charles T. Calix
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:
BRIAN J. KUCSAN, No. 230951

Case Number(s):
12-O-15301; 12-O-15736; 12-O-16098
12-O-16215; 13-O-11988 and 13-O-16206

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.

PAGE 12 - MULTIPLE ACTS OF MISCONDUCT (STG. 1.5(b)):
1st SENTENCE - DELETE - "FIVE"
INJURY - "SIX"

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

Date

03-25-2014


RICHARD A. PLATEL
Judge of the State Bar Court

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 March 27, 2014, 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:

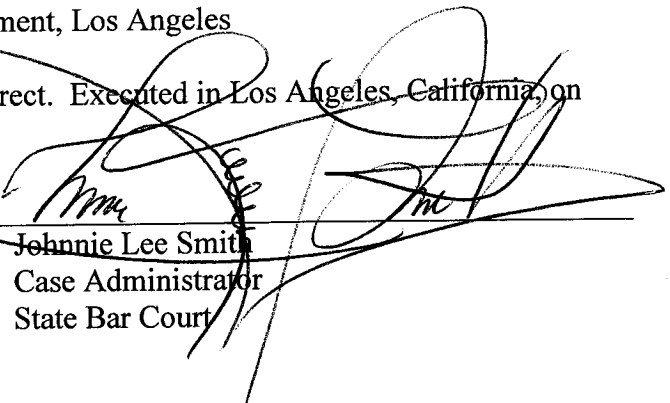
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MARIA C. ARMENTA
ARMENTA LAW FIRM APC
11900 W OLYMPIC BLVD #730
LOS ANGELES, CA 90064

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

Charles T. Calix, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 27, 2014.


Johnnie Lee Smith
Case Administrator
State Bar Court