PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **ROBERT G. SCURRAH, JR.,** **Member No. 82766,** A Member of the State Bar.	**Case Nos.: 12-O-17964 et al.-DFM** **DECISION**

INTRODUCTION

For many years respondent **Robert G. Scurrah, Jr.** (Respondent) has provided loan modification services to individuals threatened with losing their homes. In 2009, Civil Code section 2944.7 was enacted, prohibiting individuals who offer to provide loan modification services from charging or collecting "any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform." Respondent, after seeking advice from various sources, including the State Bar, sought to structure his fee agreements in a manner to avoid the prohibition of that statute, and he continued to collect advance fees from his loan modification clients after the statute went into effect. His belief in that regard was mistaken.

This is the second consolidated disciplinary proceeding to be tried against Respondent as a result of his practice of collecting such advance fees. The first case was commenced in September 2011 and included complaints involving nine former clients. After a lengthy trial, during which Respondent presented evidence that his belief that his billing procedure was

appropriate, the Hearing Department of this court concluded on August 15, 2013, that Respondent's collection of advance fees in those matters violated section 2944.7. On Respondent's appeal of that decision to the Review Department of this court, that conclusion was reaffirmed in an unpublished decision filed on February 12, 2015, and subsequently accepted by the California Supreme Court. As a result, Respondent was disciplined by the California Supreme Court, effective October 9, 2015. That discipline included a minimum 90-day actual suspension, continuing until he makes restitution of illegal fees totaling more than $25,000.

Although Respondent completely stopped taking any loan modification clients soon after receiving the Hearing Department's adverse decision in August, 2013, he had continued to collect advance fees from his loan modification clients up until that time. As a result, the State Bar has now filed seven new notices of disciplinary charges against him, alleging 23 additional violations of section 2944.7.

Prior to the trial of this matter, Respondent stipulated to culpability in all 23 matters. The only significant disputed issues during the trial of these matters related to the appropriate level of discipline.

PERTINENT PROCEDURAL HISTORY

This proceeding results from the State Bar's seriatim filing of seven separate notices of disciplinary charges during the period running from October 2013 to April 2015.

The Notice of Disciplinary Charges (NDC) in case Nos. 12-O-17964, 13-O-10351, 13-O-11044, 13-O-11194, and 13-O-11207 was filed by the State Bar of California on October 11, 2013. The matter was originally assigned to Judge Richard Honn, then a judge of this court's Hearing Department. On November 8, 2013, Respondent filed his response to the NDC, denying culpability in each of the five cases.

On November 19, 2013, the initial status conference was held in the then-pending cases. At that time the matters were scheduled to commence trial on February 24, 2014.

Two days after that status conference, on November 22, 2013, the State Bar filed the NDC in case Nos. 13-O-12453, 13-O-12595, and 13-O-13070 was filed. On December 23, 2013, Respondent filed his response to the NDC, denying culpability in each of the three cases.

On January 21, 2014, the initial status conference was held in the newly-filed cases. At that time, the two pending proceedings were consolidated and the scheduled trial date was continued to April 30, 2014.

On April 2, 2014, shortly before the scheduled trial of the two pending matters, the State Bar filed case Nos. 13-O-14073, 13-O-15642, 13-O-16003, 13-O-16163, 13-O-16575, 13-O-16726, and 13-O-16808. At the request of the parties, this new NDC was consolidated with the previously-filed cases and the existing trial date continued to October 20, 2014. On April 14, 2014, Respondent filed his response to the NDC in case Nos. 13-O-14073, et al., again denying culpability in each of the seven cases.

On April 15, 2014, the NDC in case No. 13-O-16884 was filed by the State Bar of California. On April 28, 2014, Respondent filed his response to the NDC, denying culpability in the additional case.

On May 9, 2014, this matter was reassigned from Judge Honn to the undersigned. This court then reaffirmed that the pretrial conference would be held on October 14, 2014.

On May 22, 2014, this court, in response to an unopposed motion by Respondent, consolidated case No. 13-O-16884 with the previously-filed cases and indicated that the newly-consolidated cases would be governed by the existing trial-setting and pretrial order in the proceedings, including the scheduled October 20, 2014 trial date.

On September 24, 2014, a status conference was held in the proceeding. At that status conference the parties discussed with the court the status of the appeal of the earlier disciplinary case before the Review Department and the necessary impact of that upcoming appellate decision on the instant proceeding. As a result, this court issued an order on September 24, 2014, abating these matters until the decision was rendered by the Review Department in the pending appeal of the prior disciplinary proceeding.

On September 30, 2014, the State Bar filed the NDC in case No. 14-O-2017. On October 8, 2014, Respondent filed his response to the NDC, denying culpability in the new case.

On December 17, 2014, the NDC in case Nos. 14-O-03260 and 14-O-03986 was filed by the State Bar of California. On February 26, 2015, Respondent filed his response to the NDC, denying culpability in the new cases.

On January 15, 2015, this court issued an order consolidating and continuing to abate all of the pending cases.

On February 12, 2015, the decision of the Review Department was filed in the prior disciplinary proceeding.

On February 23, 2015, a status conference was held in this proceeding, at which time these cases were unabated and a trial date of June 9, 2015 was scheduled.

On April 30, 2015, the State Bar filed four additional cases against Respondent, case Nos. 14-O-4733, 14-O-4977, 14-O-5709 and 14-O-5867. On May 6, 2015, Respondent filed a motion to add the new cases with the existing proceeding and to continue the existing trial date as a result. On May 8, 2015, the State Bar filed a statement of non-opposition to Respondent's motion. On May 13, 2015, this court issued an order, consolidating the cases and directing the parties to appear at a status conference on June 1, 2015, for the purpose of scheduling new

pretrial conference and trial dates. At that status conference, a trial date of September 22, 2015, was scheduled.

On May 18, 2015, Respondent filed his response to the last NDC, again denying culpability in each of the cases.

Trial was commenced on September 22, 2015, and completed on September 23, 2015. The trial was expedited by the parties' extensive stipulation of facts, by Respondent's stipulation to culpability for all counts, and by the parties' extensive agreement to the admissibility of most exhibits, including the Hearing Department and Review Department decisions in the prior disciplinary action and the entire record of that prior proceeding.

The State Bar was represented at trial by Senior Trial Counsel Anthony Garcia. Respondent was represented at trial by Mark N. Zanides.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Jurisdiction

Respondent was admitted to the practice of law in California on November 29, 1978, and has been a member of the State Bar at all relevant times.

Background Facts

Civil Code Section 2944.7, subdivision (a)(1), provides: "Notwithstanding any other law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following: [¶] (1) Claim, demand, charge, collect, or receive any compensation until after the

person has fully performed each and every service the person contracted to perform or represented that he or she would perform."

The history and pertinent legislative history of section 2944.7 is set forth in the Review Department's decision in the prior disciplinary proceeding against Respondent. That decision is part of the record in this proceeding, as is the entire record of that prior proceeding. The court refers to and adopts the following findings by that court:

A. Loan Modification Legislation

> On October 11, 2009, California Senate Bill number 94 (SB 94) became effective.[1] The Legislature enacted the law to regulate attorneys' performance of loan modification services. One of the new safeguards prohibits the collection of fees until all loan modification services are completed. (§ 2944.7.) The intent was to "prevent persons from charging borrowers an up-front fee, providing limited services that fail to help the borrower, and leaving the borrower worse off than before he or she engaged the services of a loan modification consultant." (Sen. Com. on Banking, Finance, and Insurance, Analysis of Sen. Bill No. 94 (2009–2010 Reg. Sess.) as amended Mar. 23, 2009, pp. 5-6.) A violation of section 2944.7, subdivision (a), is a misdemeanor (§ 2944.7, subd. (b)) and a basis for imposing attorney discipline (Bus & Prof. Code, § 6106.3, subd. (a)).

B. Impact of the New Law on Scurrah's Loan Modification Practice

> Scurrah was admitted to practice law in 1978. In March 2009, he and attorney John McGrath became owners of a large loan modification practice called CDA (Consumer Debt Advocate) Law Center. Scurrah claims to have handled 4,000 loan modifications with a high success rate. When he learned about SB 94, he tracked it through the legislation process to ascertain the bill's meaning and impact on CDA.
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> Immediately after SB 94 passed in October 2009 (hereafter section 2944.7), Scurrah sought advice about unbundling services and charging in phases for those services he completed. He began by calling the State Bar Ethics Hotline, but was told to seek legal counsel about handling payment for loan modification services. Shortly thereafter, Martin Andelman, a non-attorney loan modification expert and advocate, told Scurrah that the Legislature did not intend to prohibit attorneys from unbundling services

[1] SB 94 added sections 2944.6 and 2944.7 to the Civil Code and section 6106.3 to the Business and Professions Code (Stats. 2009, Ch. 630, § 10). [footnote is from the prior decision]

and receiving payments after a phase of the loan modification service was completed. Scurrah then spoke with loan modification attorney Steve Feldman, who told him a State Bar representative stated that loan modification services could be broken up into phases. Finally, Scurrah talked to attorney Julie Greenfield, a seasoned attorney with a strong background in real estate lending, regulation, and compliance. She was a former vice-chair of the State Bar's Consumer Financial Services Committee, and had been retained by the State Bar as an expert witness in litigation regarding mortgage loan modifications and the federal Truth-In-Lending Act. Greenfield told Scurrah that she believed attorneys could be paid after completing each specific discrete service.

Around the same time (November 2009), Scurrah read the State Bar's website posting entitled: "Senate Bill No. 94: Prohibition of Advance Fees; and Required Notices, FAQs" (FAQ). It stated that section 2944.7 makes it unlawful to "[c]laim, demand charge, collect or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform." The website warned that the "State Bar's Office of the Chief Trial Counsel will enforce the statutory language consistent with this interpretation." The posting did not mention unbundling.

After considering all this information, Scurrah changed his fee agreements. He developed a business model that segregated modification services into phases within a single retainer agreement.[2] The clients preauthorized payments for phased services, permitting CDA to withdraw funds from their bank accounts once services in a single phase had been completed. The CDA loan processing manager testified that CDA collected fees in phases and prior to completing the full loan modification packet in at least 1,300 cases.

C. Scurrah Received Additional Information about Unbundling Services

On January 15, 2011, Scurrah attended an Orange County Bar Association Continuing Legal Education program which addressed loan modifications. Andelman and Greenfield were presenters. The program provided a general primer for those interested in representing parties in loan modifications. The written materials recited the new law's prohibition against collecting any compensation until every service has been performed. The materials listed limitations on attorneys, but did not

[2] Scurrah separated his services for loan modifications into three or four phases, charging separately, in the range of $100 to $1,850, for each phase. The $100 charge was for the final phase, which covered submitting the loan proposal, communicating with the lender and client, and negotiating the modification. The more expensive phases covered preparatory services such as collecting and analyzing documents, auditing and updating the client file, collecting missing documents, and preparing the restructured loan proposal. [footnote is from the prior decision]

reference unbundling services within a single agreement. Instead, it stated: "California attorneys have divided Modification services into separate Retainer Agreements and receive payment after specified services have been performed."

The following month, on February 8, 2011, Scurrah received a State Bar investigation letter prompted by a client who complained that Scurrah collected fees before all his loan modification services had been performed. On March 8, 2011, Scurrah responded, claiming that the assertion "that a modification must be completed before any payments are made is simply incorrect." He cited Andelman and the statute's legislative history as support for his position.

In June 2011, Scurrah received two other similar complaint letters. The same month, he received an email from Greenfield opining that section 2944.7 did not prohibit attorneys from unbundling services.

Scurrah hired attorney Jon Dieringer to represent him with respect to the State Bar investigations. In August 2011, Dieringer discussed the three complaints with State Bar Investigator Hom. Hom stated that Scurrah's business practice violated section 2944.7. However, on September 19, 2011, Hom sent Dieringer a letter dismissing without prejudice the investigation in the first complaint because the matter did not warrant further action.[3]

On October 24, 2011, Dieringer called Hom to discuss the two remaining complaints. Dieringer credibly testified Hom told him the State Bar did not find anything wrong with Scurrah's phased payments. Dieringer followed up with an October 27, 2011 letter to Hom confirming: "You mentioned that the State Bar finds no impropriety in the phased payments received for the services rendered." In November 2011, the State Bar closed the investigation on the two remaining complaints without prejudice. Hom did not testify.

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[3] Two days earlier, on September 17, 2011, Scurrah attended the State Bar Annual Meeting where a State Bar supervising attorney for the loan modification fraud team presented a seminar entitled "Ethics and Loan Modifications." The materials provided specified that "charging for work in stages" violated section 2944.7. Scurrah did not believe this was the official policy of the State Bar because the program cover sheet included a standard disclaimer statement.

Around the same time, Scurrah read the pleadings and learned of a ruling in the United States District Court for the Northern District of California (*Duenas v. Brown, et al.* (N.D.Cal. Aug. 10, 2011, No. 10-CV-05884). Duenas claimed the State Bar was expansively interpreting SB 94 in a manner that prevented the public from retaining counsel for mortgage-related services, and sought to enjoin enforcement of section 2944.7, subdivision (a). Scurrah interpreted the State Bar pleadings as recognizing the propriety of unbundling. On August 10, 2011, the federal court dismissed the action with leave to amend. [footnote is from the prior decision]

In April 2012, the State Bar investigated McGrath, Scurrah's partner at CDA. McGrath told Scurrah that State Bar attorney Tim Byer suggested CDA create a separate agreement for each phase of service. Attorney Feldman told Scurrah he had received the same advice from Byer. By April 2012, Scurrah changed his agreements to comport with the State Bar's suggestion and he separated his phased services into four different retainer agreements.

In May 2012, the Better Business Bureau (BBB) contacted Scurrah about another client complaint. The BBB notice referred Scurrah to the State Bar's website that contained an updated FAQ regarding section 2944.7. The notice reiterated the language of section 2944.7 and posed the following question: "May an attorney who provides a borrower loan modification . . . services agree with the borrower that the services requested will be broken down into component parts and that a fee for each component part will be earned and collected as each part is completed?" The answer was "no." The document clarified that if an attorney is employed to assist the borrower in obtaining a loan modification, "[i]t is a violation of SB 94 to attempt to obtain a payment for any portion of the services contracted for in pursuit of the modification . . . prior to the completion of all the services required by the employment contract."

On September 2, 2012, Greenfield sent an email to David Carr, Scurrah's counsel in the investigation of the instant disciplinary proceeding. She stated that attorneys may collect fees for phased or unbundled services in loan modification cases "pursuant to one or more Retainer Agreements." On September 26 and December 18, 2012, OCTC filed the Notices of Disciplinary Charges alleging Scurrah violated section 2944.7 in nine client matters.

In November 2012, Scurrah reviewed this court's published opinion in *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 (*Taylor*), where we analyzed the new loan modification statute. In that case, Taylor argued the new law was ambiguous and should be interpreted to permit unbundling fees for services as they were completed. We disagreed and found: "The language of Civil Code section 2944.7, subdivision (a), plainly prohibits any person engaging in loan modification from collecting any fees related to such modifications until each and every service contracted for has been completed. [Citation.]" (Id. at p. 232, original italics.) Scurrah testified he does not agree with this interpretation of section 2944.7. No evidence establishes that after publication of *Taylor*, Scurrah continued to charge for unbundled services pursuant to a single retainer agreement.

(Ex. 1009, pp. 2-7.)

As stated by the Review Department in a footnote appended to the last sentence quoted above:

> The month before *Taylor's* publication, Scurrah filed a Declaratory Relief Action with the superior court seeking a determination of the correct interpretation of section 2944.7 with respect to unbundled services. The judge denied the application because the State Bar's jurisdiction to determine *application* of the statute was "off-limits" for the superior court. In its ruling, the court noted that Scurrah "correctly posits that § 2944.7 requires the lawyer to either (1) present a client with dozens of separate retainer agreements for discrete acts or (2) forgo formal 'modification' efforts and run instead directly to the courthouse steps to litigate freely." The court also stated: "On its face [section 2944.7] merely prohibits collection of fees prior to completing services [to which] the attorney agreed."

(Ex. 1009, p. 7, fn. 7.)

As mentioned by the Review Department in its prior decision, by April 2012, even before the *Taylor* decision, Scurrah had changed his fee agreements for prospective loan modification clients to comport with the State Bar's suggestion that he separate his phased services into four separate retainer agreements. The fees for the performance of each of these individual contracts would be due at the completion of the specific tasks set forth in that particular contract. All of the clients signed a withdrawal authorization, authorizing Respondent to withdraw money from the client's account after the specified services set forth in each contract had been performed. However, Respondent adopted a procedure whereby all of these individual contracts were presented to and entered into by the client at essentially the same time, rather than be executed on a phased basis. As a result, after services were completed under the first of the sequential loan modification contracts, Respondent would collect his fees for that work, despite the fact that services remained to be performed under the remaining contracts. At the time the instant proceeding came to trial, Respondent acknowledged that this alternative approach, as implemented by his office, still violated the prohibition of section 2944.7 against fees for loan

modification work being collected before "the person has fully performed each and every service the person contracted to perform or represented that he or she would perform."

During the pendency of the prior disciplinary action, despite the fact that the use of multiple contracts had been recommended by a State Bar prosecuting attorney to Respondent and others, the State Bar argued that the multiple contract approach violated section 2944.7. That fact was noted by the Review Department in it decision, but, while also noting the superior court's prior comment that such an approach was "correct," the Review Department explicitly declined to address the issue:

> Although Scurrah followed with the State Bar's pre-*Taylor* advice to use separate retainer agreements, OCTC argues that *Taylor* now prohibits this practice. We do not decide the issue of whether the use of multiple retainer agreements violates section 2944.7 because this case concerns only the propriety of collecting separate fees pursuant to a *single* agreement.

(Ex. 1009, p. 14, fn. 11.)

After receiving the Review Department's decision interpreting section 2944.7, Respondent unsuccessfully petitioned the California Supreme Court for formal review of the issue. The Supreme Court declined Respondent's petition and instead adopted the Review Department's recommendation that Respondent be disciplined for his prior fee agreements.

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The following is a review of each of the 23 individual cases filed by the State Bar against Respondent. The parties have stipulated that each of the former clients in these cases "employed Respondent to attempt to obtain a mortgage loan modification on his/her behalf under the terms and conditions more particularly described in the specific contracts pertaining to each named client."

October 11, 2013 Notice Of Disciplinary Charges

Case No. 12-0-17964 (Neal/Dunham Matter)

On May 19, 2011, Gerri Neal, later Gerri Dunham, signed a contract to purchase a REST Report. On May 19, 2011, Consumer Debt Advocate Law Center (CDA) ran a REST Report and delivered the REST Report to her.

On May 19, 2011, CDA debited $595 from Gerri Neal Dunham's credit card as payment for the REST Report.

On May 25, 2011, and May 27, 2011, Gerri Neal and Scott Dunham (Dunham), respectively, signed a contract entitled "Engagement of Legal for Home Loan Modification." Legal services were to be performed in Phases I, II, and III, with payment to be made on completion of each phase. The contract authorized CDA to withdraw $1,050 from their bank account upon completion of Phase I services, $1,050 upon completion of Phase II services, and $95 after completion of Phase III services.

On or about June 1, 2011, CDA withdrew $1,050 from the Neal/Dunham bank account pursuant to the contract for Phase I. On or about August 23, 2011, CDA withdrew $1,050 from their bank account pursuant to the contract for Phase II. Each of these withdrawals of fees by Respondent/CDA was done prior to the completion of all services that Respondent had contracted and represented would be performed.

On July 9, 2012, CDA learned that the mortgage loan servicer had denied the modification request.

Count 1 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

Business and Professions Code section 6106.3, subdivision (a), provides: "It shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to engage in any conduct in violation of Section 2944.6 or 2944.7 of the Civil

Code." As previously noted, Civil Code section 2944.7(a)(1) states that "it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following: (1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform." This language prohibits the collection of advanced fees after October 10, 2009, in mortgage loan modification matters.

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Case No. 13-O-10351 (Coleman Matter)

On February 28, 2012, Tom E. and Anastasiya Coleman employed Respondent, through CDA Law Center, to provide legal services on their behalf in connection with a home loan modification and a REST Report. Legal services were to be performed in Phases I, II, and III, with payment to be made after performance of each phase.

The contract authorized CDA to debit the clients' bank account, as follows:

a) In the amount of $595 for a Rest Report, to be paid on March 28, 2012;

b) In amount of $1,700 upon completion of Phase I, to be paid no earlier than March 12, 2012;

c) In the amount of $1,600 upon completion of Phase II, to be paid no earlier than April 28, 2012; and

d) In the amount of $100 upon completion of Phase III.

On March 12, 2012, CDA withdrew $1,700 from the clients' account as payment for Phase I. On March 28, 2012, CDA withdrew $595 from the clients' account as payment for the REST Report. On June 14, 2012, CDA withdrew $1,700 [sic] from the clients' account as payment for Phase II.

On June 19, 2012, CDA refunded $100 to the clients' account for the inadvertent overcharging of $100 on June 14, 2012.

On September 28, 2012, the mortgage loan servicer advised CDA that failure to provide the proper documents required that the bank proceed with the sale of the clients' home.

The Colemans received a Notice of Trustee Sale for a sale date of October 19, 2012.

On April 2, 2013, Respondent paid $5,000 to the clients as full settlement of their claims for repayment of legal fees in their Arbitration claim.

Count 2 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Case No. No. 13-O-11044 (Lewis Matter)

On November 11, 2011, Beatrice and John Lewis signed a signed a contract entitled "Engagement of Legal Services for REST Report Plus Home Loan Modification." Legal services were to be performed in phases I, II, and III, with payment to be made after completion of each phase. That contract authorized CDA to withdraw $595 from their bank account for the REST Report; $1,450 after Phase I services had been completed; $1,450 after Phase II services were completed; and $95 after Phase III.

On November 11, 2011, CDA prepared a REST Report for the Lewises. On December 1, 2011, CDA withdrew $595 from the Lewis' bank account to pay for the REST Report.

On January 6, 2012, CDA withdrew $1,450 from the Lewis' bank account to pay for Phase I services. On August 2, 2012, CDA withdrew $1,450 from the Lewis' bank account to pay for Phase II services.

On or about November 21, 2012, the mortgage loan lender denied the Lewis' modification request.

Count 3 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Case No 13-0-11194 (Navarro Matter)

On October 31, 2012, Sandra Navarro signed three separate agreements, entitled "Mortgage Analysis Retainer Agreement," "Underwriting Assessment Retainer Agreement" and "Loan Modification Retainer Agreement." Each contract provided for payment after the services described therein were completed.

On October 31, 2012, Navarro authorized CDA to debit entries into her bank account, as follows:

a) In the amount of $1,950 upon completion of Phase I, to be paid as early as November 14, 2012;

b) In the amount of $2,150 upon completion of Phase II, to be paid as early as December 14, 2012; and

c) In the amount of $100 upon completion of Phase III.

On November 14, 2012, CDA withdrew $1,950 from Navarro's account as payment for Phase I. This withdrawal was done prior to the completion of all services that Respondent had contracted and represented would be performed.

On January 9, 2013, CDA recommended that Navarro not move forward with Phase II.

On January 17, 2013, Navarro terminated Respondent's employment.

Count 4 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Case No. 13-0-11207 (Vicente Matter)

On May 7, 2012, Arnulfo and Blanca Vicente executed a contract entitled "Engagement of Legal Services for Home Loan Modification and REST Report." Legal services were to be performed in Phases I, II, and III, with payment to be made after the performance of each phase.

On May 12, 2012, Arnulfo Vicente authorized CDA to debit his bank account as follows:

a) In the amount of $1,950 upon completion of Phase I;

b) In the amount of $1,950 upon completion of Phase II;

c) In the amount of $100 upon completion of Phase III; and

d) In the amount of $595 for a REST Report after completion.

On May 14, 2012, CDA withdrew $595 as payment for the completed REST Report. On May 16, 2012, CDA withdrew $1,950 as payment for Phase I. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

On January 11, 2013, the mortgage loan servicer sold the property since the Vicentes had not provided documentation requested by the servicer to support the loan modification request.

Count 5 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

November 22, 2013 Notice Of Disciplinary Charges

Case No. 13-0-12543 (Castiglione Matter)

On December 6, 2012, Frank Castiglione executed four separate contracts, entitled "REST Report Agreement," "Mortgage Analysis Retainer I," "Mortgage Analysis Retainer II," and "Mortgage Analysis Retainer III."

On December 6, 2012, the client authorized CDA to debit his bank account as follows:

a) In the amount $795 for a REST Report, to be paid on December 10;

b) In the amount $1,950 upon completion of Mortgage Analysis Retainer I;

c) In the amount of $2,250 upon completion Mortgage Analysis Retainer II; and

d) In the amount of $100 upon completion of Mortgage Analysis Retainer III.

On December 10, 2012, CDA withdrew $795 from the client's bank account as payment for the REST Report. On December 28, 2012, CDA withdrew $1,950 from the client's bank account as payment for Retainer I. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

On February 11, 2013, Castiglione emailed CDA, asking for an immediate halt to the process and requesting a refund of the fees that had been paid. No refund was paid to Castiglione.

Count 1[4] – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the

[4] The counts of each NDC are numbered herein as set forth in the NDC.

client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Case No. 13-0-12595 (Castellanos Matter)

On June 30, 2011, Jose Castellanos, Jr., and Claudia Marron executed an "Engagement of Legal Services for Home Loan Modification and REST Report." Legal services were to be performed in Phases I, II, and III, with payment to be made after completion of each phase.

The contract authorized CDA to debit entries to the clients' bank account as follows:

a) In the amount of $595 for a REST Report;

b) In the amount of $1,500 for Phase I;

c) In the amount of $1,500 for Phase II; and

d) In the amount of $100 for Phase III.

On September 8, 2011, CDA withdrew $595 from the clients' bank account as payment for the completed REST Report. On September 14, 2011, CDA withdrew $1,500 from the clients' bank account as payment for Phase I. On September 27, 2011, CDA withdrew $750 from the clients' bank account as partial payment for legal services as described in Phase II. On September 30, 2011, CDA withdrew $750 from the clients' bank account as partial payment for legal services as described in Phase III. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

On November 8, 2011, the mortgage loan servicer advised CDA that it did not participate in any modification programs and denied the modification request.

Count 2 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Case No. 13-0-13070 (Smiler Matter)

On December 17, 2012, Marilyn and Eric Smiler executed four separate contracts, entitled "REST Report Agreement," "Mortgage Analysis Retainer Agreement I," "Underwriting Assessment Retainer Agreement II," and "Loan Modification Retainer Agreement III."

The contracts authorized CDA to debit entries to the Smilers' bank account as follows:

a) In the amount of $1,850 upon completion of the Mortgage Analysis Retainer Agreement I;

b) In the amount of $1,850 upon completion of the Underwriting Assessment Retainer Agreement II;

c) In the amount of $100 upon completion of the Loan Modification Retainer Agreement III; and

d) In the amount of $795 for a REST Report.

On December 20, 2012, CDA withdrew $795 as payment for the completed REST Report. On January 2, 2013, CDA withdrew $1,850 as payment for Retainer Agreement I. On March 8, 2013, CDA withdrew $1,850 as payment for Retainer Agreement II.

On May 9, 2013, the servicer granted a permanent loan modification that fixed the rate at 3.625% for the life of the loan.

On May 29th, 2013, although CDA explained to the Smilers the loan modification offer and its benefits over their negatively amortizing loan, the clients rejected the offer.

On or about May 28, 2013, Respondent refunded $4,495 to the Smilers.

Count 3 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for clients and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the clients that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

April 2, 2014 Notice Of Disciplinary Charges

Case No. 13-0-14073 (Nance/Bryant Matter)

On April 21, 2011, Barbara Nance and Kenneth Bryant executed a contract entitled "HAMP Qualification Report Plus Home Loan Modification." Legal services for the requested loan modification were to be performed in Phases I, II, and III, with payment to be made after the performance of each phase.

The contract authorized CDA to debit entries to the clients' bank account as follows.

a) In the amount of $595 for a REST Report on April 21, 2011;

b) In the amount of $1,300 for Phase I on May 10, 2011;

c) In the amount of $1,300 for Phase II on June 5, 2011; and

d) In the amount of $100 for Phase III when Phase III is complete;

On April 22, 2011, Respondent withdrew $595 from Bryant's account for the completed REST Report. On May 10, 2011, CDA withdrew $1,300 as payment for Retainer Agreement I. On June 5, 2011, CDA withdrew $1,300 as payment for Retainer Agreement II. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

On June 15, 2011, Nance and Bryant filed bankruptcy, effectively terminating their contract with Respondent.

Count 1 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Case No. 13-0-15642 (Buchan Matter)

On July 3, 2013, David and Sarah Buchan executed four separate contracts, entitled "REST Report Agreement," "Mortgage Analysis Retainer Agreement I," "Underwriting Assessment Retainer Agreement II," and "Loan Modification Retainer Agreement III."

The contracts authorized CDA to debit entries to the Buchans' bank account as follows:

a) In the amount of $1,650 upon completion of the Mortgage Analysis Retainer Agreement I;

b) In the amount of $1,650 upon completion of the Underwriting Assessment Retainer Agreement II;

c) In the amount of $100 upon completion of the Loan Modification Retainer Agreement III; and

d) In the amount of $795 for a REST Report.

On July 8, 2013, Respondent withdrew $795 from the Buchans' account for the completed REST Report. On July 24, 2013, CDA withdrew $1,650 as payment for Retainer Agreement I. On August 15, 2013, CDA withdrew $1,650 as payment for Retainer Agreement II. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

67. On or about September 5, 2013, the servicer denied the Buchans' request for a loan modification.

The Buchans requested a full refund of their fees. No refund was paid by Respondent.

Count 2 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Case No. 13-0-16003 (Nikolau Matter)

On November 8, 2012, Giorgios Nikolau executed three separate contracts, entitled "Mortgage Analysis Retainer Agreement I," "Underwriting Assessment Retainer Agreement II," and "Loan Modification Retainer Agreement III."

The contracts authorized CDA to debit entries to the client's bank account as follows:

a) In the amount of $1,650 upon completion of the Mortgage Analysis Retainer Agreement I;

b) In the amount of $1,650 upon completion of legal services the Underwriting Assessment Retainer Agreement II;

c) In the amount of $100 upon completion of the Loan Modification Retainer Agreement; and

d) In the amount of $695 for a HAMP Report.

On November 14, 2012, CDA withdrew $695 from Nikolau's account as payment for the HAMP Report. On December 3, 2012, CDA withdrew $1,650 from Nikolau's account as payment for Retainer Agreement I. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

On or about April 17, 2013, Nikolau terminated his relationship with CDA.

Count 3 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Case No. 13-0-16163 (Pekrul Matter)

On July 9, 2013, Alan and Jennifer Pekrul executed four separate contracts, entitled "REST Report Agreement," "Mortgage Analysis Retainer Agreement I," "Underwriting Assessment Retainer Agreement II," and "Loan Modification Retainer Agreement III."

The contracts authorized CDA to debit the clients' bank account as follows:

a) In the amount of $1,850 upon completion of the Mortgage Analysis Retainer Agreement I;

b) In the amount of $1,850 upon completion of legal services of the Underwriting Assessment Retainer Agreement II;

c) In the amount of $500 upon completion of legal services of the Loan Modification Retainer Agreement III; and

d) In the amount of $795 for a REST Report.

On July 15, 2013, CDA withdrew $795 as payment for a REST Report. This withdrawal was made after the report had been prepared by Respondent's office and received by the Pekruls. After the completion of the second contract, Respondent's office sought to withdraw the $1,850 that the Pekruls had agreed to pay for those services. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

On or about August 15, 2013, the Pekruls issued a stop payment on the second withdrawal; the funds were quickly restored to his account; and no remaining funds were taken from the Pekruls' bank account.

On August 27, 2013, CDA terminated its relationship with the Pekruls.

Count 4 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Case No. 13-016575 (Gunn Matter)

On June 20, 2013, Willie Gunn executed three separate contracts, entitled "Mortgage Analysis Retainer Agreement I," "Underwriting Assessment Retainer Agreement II," and "Loan Modification Retainer Agreement III."

The contracts authorized CDA to debit his bank account as follows:

a) In the amount of $1,950 upon completion of the Underwriting Assessment Retainer Agreement I;

b) In the amount of $1,950 upon completion of the Underwriting Assessment Retainer Agreement II; and

c) In the amount of $500 upon completion of the Loan Modification Retainer Agreement III.

On July 5, 2013, CDA withdrew $1,950 as payment for Retainer I. On September 3, 2013, CDA withdrew $1,950 as payment for Retainer II. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

On September 18, 2013, CDA learned that Gunn was denied for any modification.

On February 4, 2013, Respondent refunded $1,200 to Gunn.

Count 5 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the

client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Case No 13-0-16726 (Griswold Matter)

On July 18, 2013, Gary and Kathleen Griswold executed three separate contracts, entitled "Mortgage Analysis Retainer Agreement I," "Underwriting Assessment Retainer Agreement II," and "Loan Modification Retainer Agreement III."

The contracts authorized CDA to debit entries to the clients' bank account, as follows:

a) In the amount of $1,850 upon completion of the Mortgage Analysis Retainer Agreement I;

b) In the amount of $1,850 upon completion of the Underwriting Assessment Retainer Agreement II; and

c) In the amount of $500 upon completion of the Loan Modification Retainer Agreement III.

On July 19, 2013, the clients also authorized CDA to withdraw $795 from one of their bank accounts to pay for a completed HAMP Report.

On July 23, 2013, CDA withdrew $795 from the clients' account as payment for the completed HAMP Report. On August 2, 2013, CDA withdrew $1,850 from the clients' account as payment for Retainer I. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

On September 13, 2013, CDA requested withdrawal of $1,850 from the clients' account as payment for Retainer II. CDA did not receive the Retainer II payment in the amount of $1,850 because of a stop payment effected by the clients.

On September 20, 2013, CDA received a letter of termination from the clients.

Count 6 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Case No. 13-0-16808 (Besirovic Matter)

On July 29, 2013, Fuad and Mirsala Berisovic executed two separate contracts – a "Loan Screening Agreement" and a "Loan Documentation Analysis Agreement."

The contracts authorized CDA to debit the clients' bank account as follows:

a) In the amount of $1,850 upon completion of the Loan Documentation Analysis Agreement;

b) In the amount of $1,850 upon completion of legal services in the Loan Screening Agreement;

c) In the amount of $500 upon completion of the Loan Modification Agreement; and

d) In the amount of $795 as payment for a REST Report.

On August 2, 2013, CDA withdrew $795 from the clients' bank account for the completed REST Report. On August 19, 2013, CDA withdrew $1,850 as payment for the Loan Documentation Analysis Agreement. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

After having been advised that they did not qualify for a loan modification, Besirovics terminated their relationship with CDA on or about October 8, 2013.

Count 7 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

April 15, 2014 Notice Of Disciplinary Charges

Case No. 13-0-16884 (Hines Matter)

On March 12, 2013, Robert Hines executed four separate contracts, entitled "REST Report Agreement," "Mortgage Analysis Retainer Agreement I," "Underwriting Assessment Retainer Agreement II," and "Loan Modification Retainer Agreement III." These contracts related to loan numbered "6572," one of two mortgage loans owed by Hines.

The contracts authorized CDA to debit the client's bank account as follows:

a) In the amount of $795 for a REST Report;

b) In the amount of $1,950 upon completion of the Mortgage Analysis Retainer Agreement I;

c) In the amount of $1,950 upon completion of the Underwriting Assessment Retainer Agreement II; and

d) In the amount of $100 upon completion the Loan Modification Retainer Agreement III.

On March 15, 2013, CDA withdrew $795 as payment for the completed REST Report. On April 3, 2013, CDA withdrew $1,950 as payment for Agreement I for loan 6572. On October 11, 2013, CDA withdrew $1,950 for Agreement II for loan 6572. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

The October 11, 2013 withdrawal of $1,950 was refunded on November 20, 2013.

On April 13, 2013, Robert Hines executed a separate set of contracts related to a different loan, loan "2784." These contracts were also entitled "Mortgage Analysis Retainer Agreement I," "Underwriting Assessment Retainer Agreement II," and "Loan Modification Retainer Agreement III."

The contracts also authorized CDA to debit the client's bank account as follows:

a) In the amount of $1,850 upon completion of the Mortgage Analysis Retainer Agreement I;

b) In the amount of $2,150 upon completion of the Underwriting Assessment Retainer Agreement II; and

c) In the amount of $100 upon completion the Loan Modification Retainer Agreement III.

On May 6, 2013, CDA withdrew $1,850 as payment for Mortgage Analysis Retainer Agreement I. On October 25, 2013, CDA withdrew $2,150 as payment for Agreement II. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

The withdrawal of $2,150 was subsequently returned on October 29, 2013.

Count 1 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

September 25, 2014, Notice Of Disciplinary Charges

Case No. 14-0-2017 (Pyarali Matter)

On November 2, 2012, Ramzan Pyarali executed four separate contracts, entitled "REST Report Agreement," "Mortgage Analysis Retainer Agreement I," "Underwriting Assessment Retainer Agreement II," and "Loan Modification Retainer Agreement III."

The contracts authorized CDA to debit the client's bank account as follows:

a) In the amount of $795 for a REST Report on November 9, 2012;

b) In the amount of $1,650 upon completion of the Mortgage Analysis Retainer Agreement I, but no earlier than November 30, 2012;

c) In the amount of $1,650 upon completion of the Underwriting Assessment Retainer Agreement II, no earlier than December 31, 2012; and

d) In the amount of $100 upon completion of services as described in the Loan Modification Retainer Agreement III.

On November 9, 2012, CDA withdrew $795 from Pyarali's account as payment for the completed REST Report. On November 30, 2012, CDA withdrew $1,650 from Pyarali's account as payment for Agreement I. On April 8, 2013, CDA withdrew $1,650 from Pyarali's

account as payment for Agreement II. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

On July 30, 2013, the servicer advised that it had approved a modification at a new rate of 2% per annum, with a savings of $727.50 per month.

On August 5, 2013, CDA withdrew $100 for Phase III.

Count 1 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

December 17 2014, Notice Of Disciplinary Charges

Case No. 14-0-03260 (Espinoza Matter)

On April 9, 2013, Juan Espinoza executed three separate contracts, entitled "Mortgage Analysis Retainer Agreement I," "Underwriting Assessment Retainer Agreement II," and "Loan Modification Retainer Agreement III."

The contracts authorized CDA to debit the client's bank account as follows:

a) In the amount of $795 for a HAMP Report;

b) In the amount of $1,850 upon completion of the Mortgage Analysis Retainer Agreement I;

c) In the amount of $1,850 upon completion of the Underwriting Assessment Retainer Agreement II; and

d) In the amount of $100 upon completion of the Loan Modification Retainer Agreement III.

On April 19, 2013, CDA withdrew $795 from Espinoza's account as payment for the completed HAMP Report. On May 1, 2013, CDA withdrew $1,850 from Espinoza's account as payment for Agreement I. On May 24, 2013, CDA withdrew $1,850 from Espinoza's account as payment for Agreement II. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

In or about April of 2014 the servicer requested further documentation from Espinoza. When Espinoza did not produce the requested documentation, the mortgage loan servicer closed the modification file.

Count 1 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Case No. 14-0-3986 (Demsher Matter)

On August 2, 2013, John and Deborah Demsher executed three separate contracts, entitled "REST Report Agreement," "Loan Screen Agreement," and "Loan Documentation Analysis Agreement."

The contracts authorized CDA to debit the clients' account as follows:

a) In the amount of $795 as payment for a REST Report;

b) In the amount of $2,500 to pay for the Loan Screening Services; and

c) In the amount of $2,500 to pay for the Loan Document Analysis Services;

On August 7, 2013, CDA debited $795 from the clients' account for the REST Report. On August 28, 2013, CDA debited $2,500 from the clients' account for the Loan Screening service. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

On September 13, 2013, CDA debited $2,500 from the clients' account for the Loan Documentation Analysis services.[5]

On or about December 13, 2013, the servicer denied the clients' loan modification application.

Count 2 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

[5] The contract provided that the fee owed by the client under this agreement was due only after all of the services described in it had been performed. (Ex. 573, p. 11.) There is no evidence that any further services had been contracted for, represented, or actually performed after this second contract was completed and the fee collected.

April 30, 2015 Notice Of Disciplinary Charges

Case No. 14-0-4733 (Dohse Matter)

On July 18, 2012, Anna Dohse executed four separate contracts, entitled "REST Report Agreement," "Mortgage Analysis Retainer Agreement I," "Underwriting Assessment Retainer Agreement II," and "Loan Modification Retainer Agreement III."

The contracts authorized CDA to debit the client's bank account as follows:

a) In the amount of $795 for a REST Report;

b) In the amount of $1,500 as payment for Phase I;

c) In the amount of $2,000 as payment for Phase II; and

d) In the amount of $300 as payment for Phase III once servicer rendered a decision on the loan modification request.

On July 26, 2012, Respondent withdrew $795 from Dohse's bank account as payment of the REST Report. On August 8, 2012, CDA debited $1,500 from her account as payment for Phase I. On March 1, 2013, CDA debited $2,000 from her account as payment for Phase II. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

On July 3, 2013, CDA advised Dohse that the servicer denied the modification request.

Count 1 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Case No. 14-0-4977 (Riggs Matter)

On December 21, 2012, Michael and Evelyn Riggs executed three separate contracts, entitled "Mortgage Analysis Retainer Agreement I," "Underwriting Assessment Retainer Agreement II," and "Loan Modification Retainer Agreement III."

The contracts authorized CDA to debit the clients' bank account as follows:

a) In the amount of $2,495 upon completion of the Mortgage Analysis Retainer Agreement I on December 27, 2012;

b) In the amount of $2,500 upon completion of the Underwriting Assessment Retainer Agreement II on January 3, 2013; and

c) In the amount of $100 upon completion of the Loan Modification Retainer Agreement III.

On December 28, 2012, CDA withdrew $2,495 from the Riggs' account as payment for Agreement I. On January 8, 2013, CDA withdrew $2,500 from the Riggs' account as payment for Agreement II. These withdrawals were made prior to the completion of all services that Respondent had contracted and represented would be performed.

On December 30, 2013, the mortgage loan servicer informed CDA that the clients did not have enough income to support any kind of modification.

Count 2 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the

client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Case No. 14-0-5709 (Lucero Matter)

On October 4, 2012, Nena Lucero executed four separate contracts, entitled "REST Report Agreement," "Mortgage Analysis Retainer Agreement I," "Underwriting Assessment Retainer Agreement II," and "Loan Modification Retainer Agreement III."

The contracts authorized CDA to debit the client's bank account as follows:

a) In the amount of $795 to be paid on October 15, 2012, after REST Report completion;

b) In the amount of $1,650 on October 26, 2012, upon completion of the Underwriting Assessment Retainer Agreement I;

c) In the amount of $1,650 on November 30, 2012, upon completion of the Underwriting Assessment Retainer Agreement II; and

d) In the amount of $100, upon completion of the Underwriting Assessment Retainer Agreement III.

On October 31, 2012, CDA withdrew $1,650 from Lucero's bank account as payment for Phase I. This withdrawal was made prior to the completion of all services that Respondent had contracted and represented would be performed.

On December 4, 2012, Lucero notified CDA that she had filed a bankruptcy petition, effectively terminating her agreement with Respondent.

On January 4, 2013, CDA withdrew $795 for completed REST Report.

Count 3 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Case No. 14-0-5867 (Thompson Matter)

On March 23, 2013, Sammie and Jenetta Thompson executed three separate contracts, entitled "Mortgage Analysis Retainer Agreement I," "Underwriting Assessment Retainer Agreement II," and "Loan Modification Retainer Agreement III."

The contracts authorized CDA to debit the clients' bank account as follows:

a) In the amount of $1,850 on April 2, 2013, upon completion of the Underwriting Assessment Retainer Agreement I;

b) In the amount of $2,150 on April 20, 2013, upon completion of the Underwriting Assessment Retainer Agreement II; and

c) In the amount of $100, upon completion of the Underwriting Assessment Retainer Agreement III.

On April 4, 2013, CDA received a cashier's check for $1,850 from the client as payment for Retainer Agreement I. The collection and retention of this fee was prior to the completion of all services that Respondent had contracted and represented would be performed.

On April 4, 2013, CDA completed Phase II and tried to reach the clients but they were unresponsive to CDA.

Count 4 – Business and Professions Code Section 6106.3, subd. (a) [Violation of Loan Modification Provisions – Civil Code Section 2944.7]

In this count, the State Bar alleges that Respondent contracted to provide loan modification for a client and thereafter collected fees for that work before Respondent had fully performed each and every service Respondent had contracted to perform or represented to the client that he would perform, in willful violation of section 2944.7 and Business and Professions Code section 6106.3.

At trial, Respondent stipulated, and this court finds, that, by virtue of the foregoing conduct, Respondent is culpable as alleged in this count.

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct,[6] std. 1.5.) The court finds the following with respect to aggravating circumstances.

Prior Discipline

As previously noted, Respondent has been disciplined on one prior occasion. Respondent was disciplined by the California Supreme Court, effective October 9, 2015, as a result of violations of section 6106.3 in nine loan modification matters. (Case Nos. 11-O-17398, et al.) The discipline in that proceeding included a minimum 90-day actual suspension, continuing until he makes restitution of illegal fees totaling more than $25,000.

Because all of this misconduct in this matter occurred prior to the imposition of the prior discipline, the prior record of discipline is an aggravating factor but its weight as such must be evaluated pursuant to methodology set forth *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619. That analysis is set forth below.

[6] All further references to standard(s) or std. are to this source.

Multiple Acts of Misconduct

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.5(b).) [new]

Significant Harm to Vulnerable Clients

Respondent's misconduct significantly harmed his clients, who were highly vulnerable. (Std. 1.5(f) and (n).) As previously stated by the Review Department, he "exploited their financial desperation and his fiduciary position by charging advance fees that section 2944.7 prohibits." However, as in the prior proceeding, this court assigns limited weight to this aggravating factor as the State Bar did not present persuasive evidence of specific consequential financial impact or harm, while the clients received the benefit of Respondent's mortgage loan modification efforts, including the delay of any foreclosure efforts by the various lenders.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating factors.

Cooperation

Respondent entered into an extensive stipulation of facts and freely admitted culpability for all of the counts alleged in this case, for which conduct Respondent is entitled to significant mitigation credit. (Std. 1.6(e); see also *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts]; *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906 [attorney afforded substantial mitigation for cooperation by stipulating to facts not easily provable].)

Candor

Respondent demonstrated candor to the State Bar and this court regarding the circumstances showing his misconduct. Such is a mitigating factor. (Std. 1.6(e).)

Character Evidence

This court declines to afford Respondent significant mitigating credit for good character. As previously noted, the burden of proof on this mitigation issue is on Respondent. Respondent relies in this proceeding on the good character evidence he presented in the first proceeding in 2013. In its assessment of that evidence, the Review Department previously concluded:

> Scurrah is entitled to some mitigation credit for good character (std. 1.6(f)). He presented two attorney witnesses who were aware of the charges and the misconduct. But the three character witness declarations he submitted did not contain any facts establishing that those witnesses knew anything about the disciplinary proceeding or the charges. (See *In re Aquino* (1989) 49 Cal.3d 1122, 1130-1131 [seven witnesses and 20 support letters not significant mitigation because witnesses unfamiliar with details of misconduct]; but see *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to testimony of attorneys due to their "strong interest in maintaining the honest administration of justice"].)

In the instant proceeding, Respondent made no effort to augment his prior showing of good character, notwithstanding the Review Department's prior deprecation of that showing. Worse, since the prior declarations were prepared, Respondent has been found culpable of the misconduct that he was still disputing at the time the prior declarations were prepared. Whether his character witnesses would now still offer the same endorsements of his good character is now even more uncertain.

Community Service

Respondent presented significant evidence of community service, which is "a mitigating factor that is entitled to 'considerable weight.' [Citation.]." (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) The Review Department, in its decision earlier this year, concluded:

> As a second additional mitigating factor, we credit Scurrah with having performed commendable community service. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [community service is mitigating factor].) He actively supports the U.S.O. in San Diego and is dedicated to the San Diego State University Aztec Athletic Foundation where he volunteers and fundraises for scholarships. He also volunteers for a non-profit agency that focuses on rescuing abused children.

(Ex. 1009, p. 16.)

The record supporting that conclusion is part of the evidentiary record in this proceeding, and this court joins in finding that Respondent is entitled to mitigation credit for his public service.

Good Faith

In order to establish good faith as a mitigating circumstance, Respondent must clearly and convincingly prove that his beliefs were honestly held and reasonable. (*In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 976; *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653; *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652, 662 [good faith defense is not applicable unless belief is reasonable *and* honest].)

In the first disciplinary action arising out of Respondent's use of a single fee agreement, the Review Department concluded Respondent's actions, while improper, had been in good faith:

> We assign mitigating credit for Scurrah's good faith. (Std. 1.6(b); see *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653 [finding of good faith requires belief that is honestly held and reasonable].). He actively sought advice about the new statute from authoritative sources, although he received conflicting opinions from industry professionals. He revised his fee agreements upon the State Bar's recommendation, and issued refunds to two clients. He was misled by the State Bar's own actions and statements when it dismissed three matters which specifically arose from his fee agreements and when Hom advised Dieringer there was no impropriety in Scurrah's agreements.[7] Although

[7] "On review, OCTC concedes that Scurrah could have reasonably believed his phased fee agreements were permissible when the initial complaints in 2011 against him were dismissed.

> most of Scurrah's misconduct occurred while being investigated by the State Bar, the hearing judge nonetheless found he was entitled to mitigation for his overall good faith, as described above. We agree.

(Ex. 1009, p. 15.)

This conclusion, as reflected in the Review Department's footnote, quoted below, applies with equal force here to the cases arising during the time that Respondent was still using the fee agreement addressed in the prior disciplinary proceeding. The facts supporting the conclusion also extend to Respondent's decision in 2012 to switch to using multiple agreements, instead of the unitary agreement. That switch was made to comply with the advice then being given by a State Bar prosecutor to mortgage loan modification attorney, and it took place while Respondent still believed in good faith that even his original unitary fee agreements did not violate section 2944.7. Moreover, when Respondent sought to obtain an interpretation of the statute in 2012 from the superior court, the court's decision referred to Respondent's assertion - that section 2944.7 allowed the use of such multiple contracts - as a "correct" interpretation. As soon as Judge Honn of the Hearing Department issued his decision adverse to Respondent with regard to the unitary contracts, Respondent discontinued his use of any of the agreements and ceased accepting loan modification clients altogether. It was not until after Respondent had discontinued his loan modification practice altogether that he realized that the manner in which he had implemented the use of these multiple contracts failed to avoid the prohibition of the statute.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible

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This concession is relevant to our finding of good faith as a mitigating factor." [footnote is from prior Review Department decision]

professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than two decades ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

As previously noted, the misconduct in this matter results from other clients serviced by Respondent prior to his first discipline and during the time that he was using fee agreements he reasonably believed to comply with the applicable statutes. As such, any assessment of the appropriate discipline to recommend requires a so-called *Sklar* analysis, by which we "consider the totality of the findings in the two cases to determine what the discipline would have been had all the charged misconduct in this period been brought in one case." (*In the Matter of Sklar*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 619.)

In the first proceeding, the Review Department made the following determination and assessment regarding the appropriate discipline for the initial nine cases:

> Standard 2.14[8] instructs that disbarment or actual suspension is appropriate discipline for a violation of section 6106.3. The guiding case addressing violations of the 2009 loan modification laws is *In the Matter of Taylor*, *supra*, 5 Cal. State Bar Ct. Rptr. 221. Taylor was culpable of charging pre-performance loan modification fees in eight matters and one count of failing to provide the required loan modification disclosures. His misconduct was aggravated by multiple acts of misconduct, significant client harm, and lack of remorse; his single mitigating factor was good character. He failed to provide full refunds to his clients upon their request. Throughout the disciplinary proceedings, Taylor maintained that section 2944.7 permitted him to charge for unbundled services. He was suspended for six months and ordered to pay restitution.
>
> Scurrah committed misconduct similar to Taylor's, but proved five mitigating factors and paid refunds to two of nine clients. These circumstances call for a lesser discipline than in *Taylor*, particularly since Scurrah was misled by the State Bar as to the proper interpretation of section 2944.7. Further, Scurrah has a long record of discipline-free practice; Taylor had only four years of practice. Ultimately, however, Scurrah collected illegal fees in nine client matters. Accordingly, a 90-day suspension, continuing until he pays restitution, and probation are warranted to protect the public, the courts, and the legal profession. Without question, this discipline is significant for Scurrah, given his 30 years of discipline-free practice, and is in line with the applicable standard and our decision in *Taylor*.

When Respondent's misconduct in the instant proceeding is combined with that of the earlier proceeding, it is clear that additional discipline is warranted. The number of cases where Respondent charged and collected illegal fees has now grown from nine to thirty-two, with a commensurate increase in the number of people injured by his improper practice. However, it is also clear that the increase in discipline appropriate to the situation need not necessarily be severe. The factors and mitigating factors influencing the Review Department's decision to impose less discipline here than it had recommended in the *Taylor* matter, which involved only eight clients, continue to apply to Respondent's situation. His use of the improper fee

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[8] In July 2015, after this Review Department decision was issued, the standards were revised and re-numbered. What was then standard 2.14 is now 2.18. It provides, "Disbarment or actual suspension is the presumed sanction for any violation of a provision of Article 6 of the Business and Professions Code, not otherwise specified in these standards." Also potentially applicable is current standard 2.3(b), which provides, "Suspension or reproval is the presumed sanction for entering into an agreement for, charging, or collecting an illegal fee for legal services."

agreements resulted from a good faith belief in their legality, caused in part by conduct by the State Bar; he had practiced for more than 30 years without prior discipline, suggesting that his misconduct was aberration and will not be repeated; and he has otherwise been a valued member of the public and the profession. Reinforcing the lack of any need to impose additional severe discipline is the fact that Respondent discontinued his use of any of the improper fee agreements promptly on receiving the adverse decision of the Hearing Department in 2013, despite the fact that he continued to believe at that time that the decision was incorrect.

Under such circumstances, this court declines to adopt the minimum two-year actual suspension advocated by the State Bar, but concludes instead that an actual suspension of a minimum of six months and until Respondent provides restitution as set forth below is both appropriate and adequate to protect the public, the courts, and the profession.

RECOMMENDED DISCIPLINE

Actual Suspension/Probation

For the foregoing reasons, we recommend that **Robert G. Scurrah, Jr.**, State Bar No. 82766, be suspended for one year, that execution of that suspension be stayed, and that he be placed on probation for two years with the following conditions:

1. He must be suspended from the practice of law for a minimum of the first six (6) months of his probation and remain suspended until the following conditions are satisfied:

    a. He makes restitution to the following payees (or reimburses the Client Security Fund, to the extent of any payment from the Fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles:

(i) Gerri Neal Dunham and Scott Dunham in the amount of $2,695 plus 10 percent interest per year from August 23, 2011;

(ii) Beatrice and John Lewis in the amount of $2,900 plus 10 percent interest per year from August 2, 2012;

(iii) Sandra Navarro in the amount of $1,950 plus 10 percent interest per year from November 14, 2012;

(iv) Arnulfo and Blanca Vicente in the amount of $2,545 plus 10 percent interest per year from May 16, 2012;

(v) Frank Castiglione in the amount of $2,745 plus 10 percent interest per year from December 28, 2012;

(vi) Jose Castellanos, Jr., and Claudia Marron in the amount of $3,595 plus 10 percent interest per year from September 30, 2011;

(vii) Barbara Nance and Kenneth Bryant in the amount of $3,195 plus 10 percent interest per year from June 5, 2011;

(viii) David and Sarah Buchan in the amount of $4,185 plus 10 percent interest per year from August 15, 2013;

(ix) Giorgios Nikolau in the amount of $2,345 plus 10 percent interest per year from December 3, 2012;

(x) Alan and Jennifer Pekrul in the amount of $795 plus 10 percent interest per year from July 15, 2013;

(xi) Willie Gunn in the amount of $2,700 plus 10 percent interest per year from September 3, 2013;

(xii) Gary and Kathleen Griswold in the amount of $2,645 plus 10 percent interest per year from August 2, 2013;

(xiii) Fuod and Mirsala Berisovic in the amount of $2,645 plus 10 percent interest per year from August 19, 2013;

(xiv) Robert Hines in the amounts of $2,745, plus 10 percent interest per year from April 3, 2013, and $1,850 plus 10 percent interest per year from May 6, 2013;

(xv) Ramzan Pyarali in the amount of $4,095 plus 10 percent interest per year from April 8, 2013;

(xvi) Juan Espinoza in the amount of $4,495 plus 10 percent interest per year from May 24, 2013;

(xvii) John and Deborah Demsher in the amount of $3,295 plus 10 percent interest per year from August 28, 2013;

(xviii) Anna Dohse in the amount of $4,295 plus 10 percent interest per year from March 1, 2013;

(xix) Michael and Evelyn Riggs in the amount of $4,995 plus 10 percent interest per year from January 8, 2013;

(xx) Nena Lucera in the amount of $1,650 plus 10 percent interest per year from October 31, 2012; and

(xxi) Sammie and Janetta Thompson in the amount of $1,850 plus 10 percent interest per year from April 4 2013;

b. If he remains suspended for two years or more as a result of not satisfying the preceding requirement, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.

3. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.

4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

5. He 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, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him

personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if Scurrah has complied with all conditions of probation, the stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of his suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

California Rules of Court, Rule 9.20

The court recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20, 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 order in this matter.[9]

Costs

It is further recommended that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment. It is also recommended that Respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

Dated: December 10, 2015

DONALD F. MILES
Judge of the State Bar Court

[9] Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

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 December 10, 2015, I deposited a true copy of the following document(s):

DECISION

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:

MARK NICHOLAS ZANIDES
THE LAW OFFICE OF MARK ZANIDES
34145 PACFIIC COAST HIGHWAY
216
DANA POINT, CA 92629

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

ANTHONY GARCIA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 10, 2015.

Rose M. Luthi
Case Administrator
State Bar Court