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4 Attorneys for Respondent  
5 ROBERT G. SCURRAH, JR.

**FILED**  
**DEC 23 2013**  
STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

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7 **STATE BAR COURT**

8 **HEARING DEPARTMENT- LOS ANGELES**

9  
10 **In the Matter of** ) **Case No.: 13-0-12453 RAH et. al.**  
11 )  
11 **ROBERT G. SCURRAH, JR.,** ) **RESPONSE TO NOTICE OF**  
**State Bar Number 82766** ) **DISCIPLINARY CHARGES**  
12 ) **13-0-12543**  
13 **A Member of the State Bar.** )  
14 ) **[Rule of Procedure 5.43]**

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16 **Address for Service**



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18 All documents in this matter should be served on respondent's counsel at the  
19 address above.

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21 **Response to Allegations**

22 1. Respondent admits the allegations of paragraph 1.

23 **Count 1 - Case No. 13-O12453 Castiglione (Bus. & Prof. Code §6106.3)**

24 2. Respondent denies the allegations of paragraph 2.

25 **Count 2 - Case No. 13-O-12595 Castellanos (Bus. & Prof. Code §6106.3)**

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27 3. Respondent denies the allegations of paragraph 3.

1 **Count 3 - Case No. 13-O-13070 Smiler (Bus. & Prof. Code §6106.3)**

2 4. Respondent denies the allegations of paragraph 6.  
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5 **First Affirmative Defense**

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7 The Notice of Disciplinary Charges (NDC), and every count in it, fails to plead a  
8 disciplinable offense.  
9

10 **Second Affirmative Defense**

11 Imposition of Discipline would violate Respondent's Procedural Due Process  
12 rights because he had no notice that his conduct was actionable.  
13

14 **Third Affirmative Defense**

15 The State Bar of California is judicially estopped from contending that Civil Code  
16 section 2944.7 applies to "loan modification services" which precede negotiation with the  
17 lender servicer because of its position in *Duenas v. Brown*, case no. 10-CV-05884-RS,  
18 United States District Court, Northern District of California (attached document 1, 63:14-  
19 28, 7:1-5), which it successfully asserted to defeat Federal jurisdiction in that matter.  
20  
21

22 **Fourth Affirmative Defense**

23 Disciplining Respondent under the State Bar's current interpretation of Cal. Civil  
24 Code § 2944.7 will deprive him of a liberty interest without substantive due process  
25 because; 1) Respondent has a constitutionally protected liberty interest I pursuing his  
26 profession free from unreasonable government interference and 2) the State Bar's current  
27  
28

1 interpretation of § 2944.7 prevents Respondent from representing clients seeking loan  
2 modifications to save their homes.

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4 **Fifth Affirmative Defense**

5 The State Bar's interpretation of § 2944.7 lacks a rational basis because it  
6 contradicts the statute's text and, far from being rationally related to a proper legislative  
7 goal, actively thwarts it.

8  
9 **Sixth Affirmative Defense**

10 Even if § 2944.7 prohibits separation of legal services, the Bar's own actions  
11 rendered the statute unclear and highly debatable, thus precluding discipline.

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13 **Seventh Affirmative Defense**

14 The State Bar of California is barred from prosecuting Mr. Scurrah by its  
15 inequitable conduct including, but not limited to:

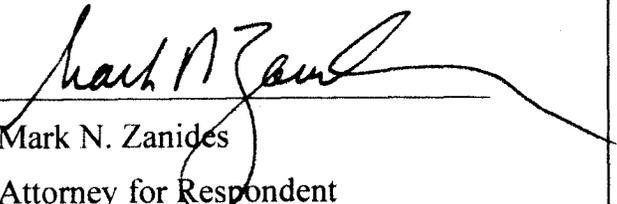
16 (1) adopting a construction of Civil Code section 2944.7 for disciplinary purposes  
17 completely inconsistent with its position in *Duenas*;

18 (2) misleading Mr. Scurrah that CDA's fee agreement was in compliance with  
19 applicable rules by closing several complaints (the Dise, Franjic and Fields matters)  
20 raising the identical issues as those in the NDC on the grounds that "this matter does not  
21 warrant further action" and then choosing to charge 2944.7 on the basis of taking phased  
22 fee payments pursuant to contracts that are identical in material respects;  
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1 (3) refusing to negotiate in good faith during the Early Neutral Evaluation  
2 Conference (ENEC) held in September 2012 in retaliation for Mr. Scurrah's filing of a  
3 civil action against the State Bar and Jayne Kim personally seeking a judicial  
4 interpretation of Civil Code section 2944.7 and challenging the constitutionality of  
5 2944.7 as applied by the State Bar;  
6

7 (4) disclosing confidential information concerning Mr. Scurrah to a former State  
8 Bar employee who had a been a client of CDA and encouraging her to file a complaint.  
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11  
12 Dated: December 20, 2013

By: 

Mark N. Zanides

Attorney for Respondent

ROBERT G. SCURRAH

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**CERTIFICATE OF SERVICE**

I, the undersigned, declare that I am over the age of 18 and am not a party to this action.

On December 20, 2013, I served a copy of the foregoing document in entitled:

**RESPONSE TO NOTICE OF DISCIPLINARY CHARGES  
13-0-12543**

on all interested parties in said case as follows:

STATE BAR OF CALIFORNIA  
OFFICE OF THE CHIEF TRIAL COUNSEL  
ANTHONY J, GARCIA, No 171419  
SENIOR TRIAL COUNSEL  
1149 S. Hill Street  
Los Angeles, California 90015

**[X] BY MAIL: [ CCP sections 1013 and 1013(a)**

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct. This declaration is executed in Laguna Niguel, California, on December 20, 2013.

  
Michael Zanides