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State Bar Court of California
Hearing Department
Los Angeles
STAYED SUSPENSION

ORIGINAL

PUBLIC MATTER

Counsel For The State Bar Erin McKeown Joyce Senior Trial Counsel 845 South Figueroa Street Los Angeles, California 90017-2515 (213) 765-1356 Bar # 149946	Case Number(s): 14-O-01959 (INV) 14-O-02983 14-O-03738	For Court use only FILED OCT 15 2014 P.B. STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent Arthur Lewis Margolis Margolis & Margolis LLP 2000 Riverside Dr Los Angeles, CA 90039 (323) 953-8996 Bar # 57703	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: PAUL CONG NGUYEN Bar # 204713 A Member of the State Bar of California (Respondent)		

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

A. Parties' Acknowledgments:



- (1) Respondent is a member of the State Bar of California, admitted **December 7, 1999**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **15** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☐ Costs are added to membership fee for calendar year following effective date of discipline.
 - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: **two (2) billing cycles immediately following the effective date of the Supreme Court Order in this matter.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) ☒ **Prior record of discipline**
- (a) ☒ State Bar Court case # of prior case **13-O-12516, et al. See page 11 of the Attachment to Stipulation Re Facts, Conclusions of Law and Disposition for a further explanation of the facts and circumstances of Respondent's prior imposition of discipline.**
 - (b) ☒ Date prior discipline effective **June 12, 2014**
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **22 counts of violating Business and Professions Code section 6106.3 (collecting advanced fees).**
 - (d) ☒ Degree of prior discipline **Two year actual suspension and until Respondent provides full restitution to his loan modification clients.**
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **See page 11 of the Attachment to Stipulation Re Facts, Conclusions of Law and Disposition for a further explanation of the facts and circumstances of this aggravating circumstance.**

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- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See page 11 of the Attachment to Stipulation Re Facts, Conclusions of Law and Disposition for a further explanation of the facts and circumstances of this aggravating circumstance.**
- (8) ☒ **Restitution:** Respondent failed to make restitution. **See page 11 of the Attachment to Stipulation Re Facts, Conclusions of Law and Disposition for a further explanation of the facts and circumstances of this aggravating circumstance.**
- (9) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

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- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances

Pre-filing Stipulation. See page 11 of the Attachment to Stipulation Re Facts, Conclusions of Law and Disposition for a further explanation of this mitigating circumstance.

Community Service. See page 11 of the Attachment to Stipulation Re Facts, Conclusions of Law and Disposition for a further explanation of this mitigating circumstance.

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **two years**.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

The above-referenced suspension is stayed.

(2) ☒ **Probation:**

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

E. Additional Conditions of Probation:

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

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

- (5) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

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- (6) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) ☐ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
- ☒ No Ethics School recommended. Reason: **Respondent was ordered to complete Ethics School in connection with Case No. 13-O-12516, et al. effective June 12, 2014. (See rule 5.135(A), Rules Proc. of State Bar.).**
- (8) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9) ☒ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☐ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- ☒ No MPRE recommended. Reason: **Respondent was ordered to complete MPRE in connection with Case No. 13-O-12516, et al. effective June 12, 2014.**
- (2) ☐ **Other Conditions:**

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In the Matter of: PAUL CONG NGUYEN	Case Number(s): 14-O-01959, 14-O-02983, 14-O-03738
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Financial Conditions

a. Restitution

- ☒ Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Lionel Ford	\$3,700	February 1, 2013
Billy and Ernestine Jamison	\$3,700	March 15, 2013
Harry and Colleen Yorke	\$3,700	March 21, 2013

- ☐ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- ☒ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
Lionel Ford	\$500	Quarterly
Billy and Ernestine Jamison	\$500	Quarterly
Harry and Colleen Yorke	\$500	Quarterly

- ☒ If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

- ☐ 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and,
 - 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- ☐ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: PAUL CONG NGUYEN

CASE NUMBERS: 14-O-01959, 14-O-02983, 14-O-03738

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 14-O-01959 (Complainant: Lionel Ford)

FACTS:

1. On February 1, 2013, Lionel Ford hired Respondent and entered into a fee agreement with Respondent for legal services in connection with obtaining a residential mortgage loan modification on behalf of Ford.
2. Ford paid Respondent a total sum of \$2,700 in advanced attorney fees related to the residential loan modification services, as follows:
 - a. On February 1, 2013, Ford paid Respondent \$1,000;
 - b. On March 12, 2013, Ford paid Respondent an additional \$1,000;
 - c. On March 28, 2013, Ford paid Respondent an additional \$1,000; and
 - d. On April 26, 2013, Ford paid Respondent an additional \$700.
3. At the time Respondent received any portion of the \$3,700 from Ford, Respondent had not completed all of the residential mortgage loan modification services that he agreed to perform on behalf of Ford.

CONCLUSIONS OF LAW:

4. By negotiating, arranging or offering to perform a residential mortgage loan modification or mortgage loan forbearance for a fee paid by a client and borrower, namely Ford, and demanding, charging, collecting and receiving fees from Ford prior to fully performing each and every service he contracted to perform or represented he would perform, in violation of Civil Code section 2944.7(a)(1), Respondent wilfully violated Business and Professions Code section 6106.3.

Case No. 14-O-02983 (Complainant: Billy and Ernestine Jamison)

FACTS:

5. On March 15, 2013, Billy Jamison and Ernestine Jamison (collectively "the Jamisons") hired Respondent and entered into a fee agreement with Respondent for legal services in connection with obtaining a residential mortgage loan modification on behalf of the Jamisons.

6. The Jamisons paid Respondent a total sum of \$3,700 in advanced attorney fees related to the residential loan modification services as follows:

- a. On March 15, 2013, the Jamisons paid Respondent \$850;
- b. On March 31, 2013, the Jamisons paid Respondent an additional \$850;
- c. On April 15, 2013, the Jamisons paid Respondent an additional \$1,000; and
- d. On May 15, 2013, the Jamisons paid Respondent an additional \$1,000.

7. At the time Respondent received any portion of the \$3,700 from the Jamisons, Respondent had not completed all of the residential mortgage loan modification services that he agreed to perform on behalf of the Jamisons.

CONCLUSIONS OF LAW:

8. By negotiating, arranging or offering to perform a residential mortgage loan modification or mortgage loan forbearance for a fee paid by a client and borrower, namely the Jamisons, and demanding, charging, collecting and receiving fees from the Jamisons prior to fully performing each and every service he contracted to perform or represented he would perform, in violation of Civil Code section 2944.7(a)(1), Respondent wilfully violated Business and Professions Code section 6106.3.

Case No. 14-O-03738 (Complainant: Harry and Colleen Yorke)

FACTS:

9. On March 19, 2013, Harry Yorke and Colleen Yorke (collectively "the Yorkes") hired Respondent and entered into a fee agreement with Respondent for legal services in connection with obtaining a residential mortgage loan modification on behalf of the Yorkes.

10. The Yorkes paid Respondent a total sum of \$3,700 in advanced attorney fees related to the residential loan modification services as follows:

- a. On March 21, 2013, the Yorkes paid Respondent \$1,700;
- b. On April 21, 2013, the Yorkes paid Respondent an additional \$1,000; and
- c. On May 21, 2013, the Yorkes paid Respondent an additional \$1,000.

11. At the time Respondent received any portion of the \$3,700 from the Yorkes, Respondent had not completed all of the residential mortgage loan modification services that he agreed to perform on behalf of the Yorkes.

CONCLUSIONS OF LAW:

12. By negotiating, arranging or offering to perform a residential mortgage loan modification or mortgage loan forbearance for a fee paid by a client and borrower, namely the Yorkes, and demanding, charging, collecting and receiving fees from the Yorkes prior to fully performing each and every service he contracted to perform or represented he would perform, in violation of Civil Code section 2944.7(a)(1), Respondent wilfully violated Business and Professions Code section 6106.3.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has one prior imposition of discipline in State Bar Case No. 13-O-12516 et al. Respondent's two year actual suspension was effective June 12, 2014, wherein Respondent was actually suspended from the practice of law for two years, stemming from violations of Business and Professions Code section 6106.3, for collecting advanced fees in 22 loan modification cases in the time period from November 2011 through May 2013. Pursuant to the prior disciplinary order, Respondent will remain on actual suspension until he provides full restitution to his loan modification clients totaling \$82,306 plus interest.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's conduct in these three client matters evidence multiple acts of misconduct. (*In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.)

Harm (Std. 1.5(f)) Respondent's misconduct caused significant financial harm to each of the client-victims herein. (*Kelly v. State Bar* (1991) 53 Cal.3d 509, 519–520 [in absence of additional facts, attorney's failure to promptly pay client funds constitutes genuine monetary injury].)

Failure to Make Restitution (Std. 1.5(i)): Respondent owes restitution to all three clients in the matters which are the subject of this stipulation. These clients were all facing serious financial challenges at the time Respondent improperly collected advanced fees from them. It is serious aggravation that the illegal fees have not been refunded to date.

MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

Pre-filing Stipulation: Respondent met with the State Bar trial counsel, admitted his misconduct, and entered into this Stipulation fully resolving these matters. Respondent's cooperation has saved the State Bar significant resources and time. Respondent's stipulation to the facts, culpability, and discipline is a mitigating circumstance. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigating credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521).

Community Service: As recognized in the stipulation with Respondent in Case No. 13-O-12516, et al., Respondent has provided evidence of volunteering many hours of community service at his church, for which he is entitled to mitigation. (See *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752 [Respondent's long service to the Bar and for his community entitled to substantial mitigation].) This mitigation is somewhat diminished, since Respondent received mitigating credit for the same volunteer service in the prior discipline.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the

courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.)

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

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

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

Under Standard 1.7(a), “[i]f a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.” Here, the gravamen of Respondent’s misconduct is his repeated violation of Business and Professions Code section 6106.3 – collecting advanced fees for loan modification services.

The appropriate Standard to employ to assess Respondent’s misconduct is Standard 2.14. Under Standard 2.14, which provides the level of discipline range for offenses involving a violation of other Article 6 statutes not specifically set forth elsewhere in the Standards, “[d]isbarment or actual suspension is appropriate for any violation of a provision of Article 6 of the Business and Professions Code, not otherwise specified in these Standards.”

In determining whether to impose a sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary

purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Std. 1.7(b) and (c).)

In considering the primary purposes of discipline, an additional period of actual suspension is not warranted. Respondent is now serving the two year actual suspension with the "and, until" restitution is paid provision in connection with his prior discipline. Considering all of Respondent's misconduct together, a two year actual suspension is appropriate. Requiring Respondent to pay restitution to the three clients in the present matters will be sufficient to protect the public, the courts and legal profession, maintain the highest professional standards and preserve the public's confidence in the legal profession as required by Standard 1.1.

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

In mitigation, Respondent has engaged in community service for which he received credit in his prior discipline. Moreover, Respondent fully cooperated with the State Bar to resolve the prior matters by stipulation, and has cooperated to resolve these three matters by stipulation.

Consideration of the type of misconduct involved also supports a determination that no additional period of suspension should be imposed. Respondent's collection of advanced fees for loan modification legal services occurred in the time span of late 2011 through May 2013. There is no evidence that Respondent continued his misconduct after May 2013.

Nonetheless, Respondent's misconduct is serious. Respondent has repeatedly violated Business and Professions Code section 6106.3 by accepting advanced fees for loan modification legal services in violation of Civil Code section 2944.7. There were 22 clients involved in Respondent's prior discipline, which resulted in a two year actual suspension. There were three more clients harmed in the present matters, where Respondent took advanced fees for loan modification services. The number of affected clients is significant.

In considering the degree of harm to the clients, in the prior discipline only one of the clients received a full refund, so the harm to 21 of those clients was significant. All but one of the clients in the prior discipline and all three clients in the present matters are awaiting refunds. The harm resulting from improperly collecting advanced fees from these clients is serious. The extent of the misconduct was limited to a discrete time period, but the harm to the clients is significant.

In a recent Review Department case, *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, the respondent attorney was found culpable of violating Civil Code section 2944.7 and collecting illegal and unconscionable fees in eight client matters, and was suspended for six months. In *Taylor*, the respondent attorney had not paid full refunds to any of the clients. He was found to have engaged in multiple acts of misconduct, causing significant harm to his clients and displaying indifference toward rectification or atonement for his misconduct. In contrast, Respondent here has admitted culpability for violating Business and Professions Code section 6106.3 in 25 matters, significantly more matters than were involved in *Taylor*. Accordingly, imposition of a longer period of actual suspension than that imposed in *Taylor* is appropriate. Since Respondent is already subject to a

two year actual suspension, currently in effect, no additional period of actual suspension is warranted in this present matter.

Following Standard 2.14 and considering the totality of the misconduct considered in the prior and current matters, particularly in light of the extent of the misconduct and degree of harm to the clients, and considering the aggravating and mitigating circumstances, imposition of a total period of actual suspension of two years is appropriate for all of Respondent's misconduct. Accordingly, in this matter, Respondent will face no additional period of actual suspension to resolve these three matters. Imposition of a two year actual suspension with the "and, until" provision will be sufficient to protect the public, the courts and the legal profession under Standard 1.1, and falls squarely within the Standards for discipline in these matters.


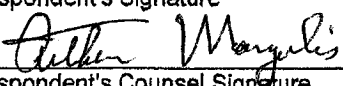
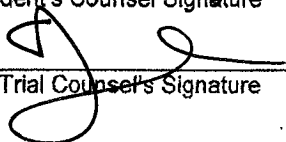
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In the Matter of:
PAUL CONG NGUYEN

Case number(s):
14-O-01959, 14-O-02983, 14-O-03738

SIGNATURE OF THE PARTIES

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

<u>9/23/14</u>		<u>Paul Cong Nguyen</u>
Date	Respondent's Signature	Print Name
<u>9/27/14</u>		<u>Arthur Margolis</u>
Date	Respondent's Counsel Signature	Print Name
<u>9-29-14</u>		<u>Erin McKeown Joyce</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:
PAUL CONG NGUYEN

Case Number(s):
14-O-01959; 14-O-02983; 14-O-03738

STAYED SUSPENSION ORDER

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

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

(1) At page 2, item B.(1)(d), delete the period after "clients" and add: "and until he complies with Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii)."; and

(2) At page 9, under "FACTS", the first sentence in paragraph number 2, delete "\$2,700" and replace with "\$3,700."

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

October 14, 2014
Date


GEORGE E. SCOTT, JUDGE PRO TEM
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 15, 2014, I deposited a true copy of the following document(s):

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

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

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

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

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

Erin M. Joyce, Enforcement, Los Angeles

Terrie Goldade, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 15, 2014.



Paul Barona
Case Administrator
State Bar Court