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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION PUBLIC MATTER</b>		
<b>Counsel For The State Bar</b>  <b>Anand Kumar</b> <b>Senior Trial Counsel</b> <b>845 S. Figueroa Street</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1714</b>  <b>Bar # 261592</b>	<b>Case Number(s):</b> <b>14-O-04331,</b> <b>14-O-05378,</b> <b>15-O-12294,</b> <b>15-O-13496,</b> <b>16-O-11887,</b> <b>16-O-16123</b>	<b>For Court use only</b>   <b>FILED</b> <b>JUL 26 2017</b> P.B. <b>STATE BAR COURT</b> <b>CLERK'S OFFICE</b> <b>LOS ANGELES</b>
<b>In Pro Per Respondent</b>  <b>Thomas Richard D'Arco</b> <b>878 Via Mesa Verde</b> <b>Riverside, CA 92507</b> <b>(951) 787-9100</b>  <b>Bar # 79929</b>	<b>Submitted to: Settlement Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND</b> <b>DISPOSITION AND ORDER APPROVING</b>  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> <b>PREVIOUS STIPULATION REJECTED</b>	
<b>In the Matter of:</b> <b>THOMAS RICHARD D'ARCO</b>  <b>Bar # 79929</b>  <b>A Member of the State Bar of California</b> <b>(Respondent)</b>		

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

### A. Parties' Acknowledgments:



- (1) Respondent is a member of the State Bar of California, admitted **June 23, 1978**.
- (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 **19** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☐ Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: **two (2) billing cycles immediately following the effective date of the Supreme Court order in this matter.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - ☐ Costs are entirely waived.

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

- (1) ☒ **Prior record of discipline**
- (a) ☒ State Bar Court case # of prior case **14-O-06310 and 15-O-10704**
  - (b) ☒ Date prior discipline effective **March 18, 2016**
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code section 6106.3 [collection of illegal advance fees for loan modification services, failure to provide requisite notice to clients], and rule 3-110(A) [failure to perform legal services competently by failing to supervise staff].**
- For a further discussion of Respondent's prior discipline, see pages 14-15.**
- (d) ☒ Degree of prior discipline **two (2) year stayed suspension and two (2) year probation with conditions**
  - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.

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- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) ☐ **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.
- (8) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See page 15.**
- (9) ☒ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **See page 15.**
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☐ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
- (12) ☒ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct. See page 15.
- (13) ☒ **Restitution:** Respondent failed to make restitution. See page 15.
- (14) ☒ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable. See page 16.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively reasonable.

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- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**Refiling Stipulation (see page 16)**

#### **D. Discipline:**

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of **two (2) years**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:
- (b) ☒ The above-referenced suspension is stayed.
- (2) ☒ **Probation:**
- Respondent must be placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) ☒ **Actual Suspension:**
- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **one (1) year**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct

- ii. ☒ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1) ☒ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and present learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6) ☒ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

☐ No Ethics School recommended. Reason:

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- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☒ The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input checked="" type="checkbox"/> Financial Conditions  |

**F. Other Conditions Negotiated by the Parties:**

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

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In the Matter of: <b>THOMAS RICHARD D'ARCO</b>	Case Number(s): <b>14-O-04331, 14-O-05378, 15-O-12294, 15-O-13496, 16-O-11887, 16-O-16123</b>
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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
Michelle Moschides	\$1,000	March 6, 2015
Kevin McCormack	\$1,441	April 21, 2015

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

**To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payment(s) provided satisfactory proof of such is or has been shown to the Office of Probation.**

### b. Installment Restitution Payments

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

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

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

### c. Client Funds Certificate

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

b. Respondent has kept and maintained the following:

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

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

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

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. **Client Trust Accounting School**

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



**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      THOMAS RICHARD D'ARCO

CASE NUMBERS:                      14-O-04331, 14-O-05378, 15-O-12294, 15-O-13496,  
   16-O-11887, 16-O-16123

**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-04331 (Complainant: Randy Bouche)

**FACTS:**

1. On November 22, 2013, Randy Bouche ("Bouche"), a resident of Wisconsin, entered into a fee agreement to hire respondent to perform legal services, including specifically to renegotiate his home mortgage loan with his mortgage lender, Associated Bank, in connection with his property located in Algoma, Wisconsin.
2. At no time has respondent ever been licensed to practice law in Wisconsin.
3. Per Wisconsin Supreme Court Rules, rule 23.02(1), "No person may engage in the practice of law in Wisconsin or attempt to do so, or make a representation that he or she is authorized to do so, unless the person is currently licensed to practice law in Wisconsin...." Per rule 23.01, the practice of law in Wisconsin includes giving advice or counsel to others as to their legal rights or responsibilities of others for fees or other consideration as well as negotiation of legal rights or responsibilities on behalf of another entity or person(s). Similarly, according to the Wisconsin Rules of Professional Conduct, rule 5.5(b)(2) further provides that a lawyer who is not admitted to practice in Wisconsin shall not "hold out to the public or otherwise represent that the lawyer is admitted to practice" in Wisconsin.
4. Between November 22, 2013, and December 20, 2013, respondent charged and collected legal fees totaling \$1,800 from Bouche for the legal services.
5. Between January 13, 2014 and February 19, 2014, respondent's firm submitted the authorization form and a loan modification package on Bouche's behalf to his mortgage lender, and in so doing, respondent held himself out as being entitled to practice law in Wisconsin. Bouche did not obtain any loan modification relief through respondent's services.
6. By holding himself out to both Bouche at the time of retention and to Bouche's mortgage lender, and performing legal services on behalf of Bouche in Wisconsin, where he was not licensed to do so, respondent engaged in unauthorized practice of law in violation of Wisconsin Rules of Professional Conduct rule 5.5(b)(2) and Wisconsin Supreme Court Rules, rules 23.02(1) and 23.01. Moreover, because respondent was not entitled to practice law in Wisconsin when he collected the legal fees from Bouche, the legal fees he accepted were also illegal.

7. After Bouche submitted a State Bar complaint, respondent fully refunded Bouche's fees in January 2015.

#### CONCLUSIONS OF LAW:

8. By agreeing to attempt to negotiate a home mortgage loan modification on Bouche's behalf and sending correspondence to his lender, when to do so was in violation of the regulations of the profession in Wisconsin, namely Wisconsin Rules of Professional Conduct rule 5.5(b)(2) and Wisconsin Supreme Court Rules, rules 23.02(1) and 23.01, respondent willfully violated the Rules of Professional Conduct, rule 1-300(B).

9. By charging and collecting legal fees totaling \$1,800 from Bouche between November 22, 2013, and December 20, 2013, to perform legal services in Wisconsin, where he was not licensed to practice law, respondent charged and collected an illegal fee, in willful violation of Rules of Professional Conduct, rule 4-200(A).

#### Case No. 14-O-05378 (Complainant: Jennifer Smith)

#### FACTS:

10. On July 17, 2014, Jennifer Smith ("Smith"), a resident of Illinois, entered into a fee agreement to hire respondent to perform legal services, including specifically to renegotiate her home mortgage loan with her mortgage lender, Caliber Home Loans, in connection with her property located in Chicago, Illinois.

11. At no time has respondent ever been licensed to practice law in Illinois.

12. Pursuant to the Illinois Rules of Professional Conduct, rule 5.5(b)(2) provides that a lawyer who is not admitted to practice in Illinois shall not "hold out to the public or otherwise represent that the lawyer is admitted to practice" in Illinois.

13. On July 17, 2014, respondent charged and collected an illegal fee in the amount of \$995 from Smith for the legal services.

14. On July 18, 2014, Smith's mortgage lender offered her a trial loan modification through her own efforts prior to any performance of legal services by respondent, and accordingly she requested a refund from respondent shortly thereafter.

15. By holding himself out to Smith as being entitled to practice law in Illinois at the time of retention, where he was not licensed to do so, respondent engaged in unauthorized practice of law in violation of Illinois Rules of Professional Conduct, rule 5.5(b)(2). Moreover, because respondent was not entitled to practice law in Illinois when he collected the legal fees from Smith, the legal fees he accepted were also illegal.

16. After Smith submitted a State Bar complaint, respondent fully refunded Smith's fees in March 2015.

## CONCLUSIONS OF LAW:

17. By agreeing to attempt to negotiate a home mortgage loan modification on Smith's behalf, when to do so was in violation of the regulations of the profession in Illinois, namely Illinois Rules of Professional Conduct, rule 5.5(b)(2), respondent willfully violated the Rules of Professional Conduct, rule 1-300(B).

18. By charging and collecting legal fees in the amount of \$995 from Smith on July 17, 2014, to perform legal services in Illinois, where he was not licensed to practice law, respondent charged and collected an illegal fee, in willful violation of Rules of Professional Conduct, rule 4-200(A).

### Case No. 15-O-12294 (Complainant: Michelle Moschides)

## FACTS:

19. On March 6, 2015, Michelle Moschides ("Moschides"), a resident of New York, entered into a fee agreement to hire respondent to perform legal services, including specifically to renegotiate her second and third home mortgage loans with her mortgage lender, TD Bank, in connection with her property located in Staten Island, New York.

20. At no time has respondent ever been licensed to practice law in New York.

21. Pursuant to New York Judiciary Law section 478, "It shall be unlawful for any natural person ... to hold himself or herself out to the public as being entitled to practice law as aforesaid, or in any other manner, or to assume to be an attorney or counselor-at-law, or to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law, or attorney-at-law or counselor-at-law, or attorney, or counselor, or attorney and counselor, or equivalent terms in any language, in such manner as to convey the impression that he or she is a legal practitioner of law or in any manner to advertise that he or she either alone or together with any other persons or person has, owns, conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, and without having taken the constitutional oath."

22. Between March 12, 2015 and June 12, 2015, respondent charged and collected illegal fees totaling \$3,500 from Moschides for the legal services.

23. In April 2015, respondent's firm also submitted an authorization form and a loan modification package on Moschides' behalf to her mortgage lender, and in so doing, respondent held himself out as being entitled to practice law in New York to the lender. Moschides did not obtain any loan modification relief through respondent's services.

24. By holding himself out to both Moschides at the time of retention and to Moschides's mortgage lender, where he was not licensed to do so, respondent engaged in unauthorized practice of law in violation of New York Judiciary Law section 478. Moreover, because respondent was not entitled to practice law in New York when he collected the legal fees from Moschides, the legal fees he accepted were also illegal.

25. After Moschides submitted a State Bar complaint, respondent partially refunded \$1,000 of Moschides's fees in September 2015.

## CONCLUSIONS OF LAW:

26. By agreeing to attempt to negotiate a home mortgage loan modification on Moschides's behalf and sending correspondence to her lender, when to do so was in violation of the regulations of the profession in New York, namely New York Judiciary Law section 478, respondent willfully violated the Rules of Professional Conduct, rule 1-300(B).

27. By charging and collecting legal fees totaling \$3,500 from Moschides between March 12, 2015 and June 12, 2015, to perform legal services in New York, where he was not licensed to practice law, respondent charged and collected an illegal fee, in willful violation of Rules of Professional Conduct, rule 4-200(A).

### Case No. 15-O-13496 (Complainant: Darren McHale)

## FACTS:

28. On May 4, 2015, Darren McHale ("McHale"), a resident of New Mexico, entered into a fee agreement to hire respondent to perform legal services, including specifically to renegotiate his home mortgage loan with his mortgage lender, Caliber Home Loans, in connection with his property located in Rio Rancho, New Mexico.

29. At no time has respondent ever been licensed to practice law in New Mexico.

30. Pursuant to New Mexico Rules of Professional Conduct, rule 16-505(D)(2) provides that a lawyer who is not admitted to practice in New Mexico shall not "hold out to the public or otherwise represent that the lawyer is admitted to practice" in New Mexico.

31. Between May 26, 2015 and June 15, 2015, respondent charged and collected illegal fees totaling \$1,894 from McHale for the legal services.

32. On or about May 14, 2015, respondent's firm also submitted an authorization form and thereafter submitted a loan modification package on McHale's behalf to his mortgage lender by June 15, 2015 (when his services were terminated), and in so doing, Respondent held himself out as being entitled to practice law in New Mexico to the lender. McHale did not obtain any loan modification relief through respondent's services.

33. By holding himself out to both McHale at the time of retention and to McHale's mortgage lender, where he was not licensed to do so, respondent engaged in unauthorized practice of law in violation of New Mexico Rules of Professional Conduct, rule 16-505(D)(2). Moreover, because respondent was not entitled to practice law in New Mexico when he collected the legal fees from McHale, the legal fees he accepted were also illegal.

34. After McHale submitted a State Bar complaint, respondent fully refunded McHale's fees in July 2015.

## CONCLUSIONS OF LAW:

35. By agreeing to attempt to negotiate a home mortgage loan modification on McHale's behalf and sending correspondence to his lender, when to do so was in violation of the regulations of the

profession in New Mexico, namely New Mexico Rules of Professional Conduct, rule 16-505(D)(2), respondent willfully violated the Rules of Professional Conduct, rule 1-300(B).

36. By charging and collecting legal fees totaling \$1,894 from McHale between May 26, 2015 and June 15, 2015, to perform legal services in New Mexico, where he was not licensed to practice law, respondent charged and collected an illegal fee, in willful violation of Rules of Professional Conduct, rule 4-200(A).

Case No. 16-O-11887 (Complainant: Robbie Palomarez)

FACTS:

37. On May 17, 2014, Robbie Palomarez ("Palomarez"), a California resident, entered into a fee agreement to hire respondent to perform legal services, including specifically to renegotiate his second home mortgage loan with his mortgage lender, Rushmore Loan Management, in connection with his property located in Whittier, California.

38. Between May 19, 2014 and June 19, 2014, respondent charged and collected advance legal fees totaling \$2,684 from Palomarez for the legal services.

39. On June 9, 2014, respondent submitted an authorization form to the lender on Palomarez's behalf, and thereafter performed loan modification services until June 24, 2014, when his services were terminated. Palomarez did not obtain any loan modification relief through respondent's services.

40. After Palomarez submitted a State Bar complaint, respondent fully refunded Palomarez's fees by November 2016.

CONCLUSION OF LAW:

41. By charging and collecting legal fees totaling \$2,684 from Palomarez between May 19, 2014 and June 19, 2014 to negotiate a home mortgage loan modification or other form of mortgage loan forbearance on his behalf before he had fully performed each and every service he contracted to perform or represented to Palomarez that he would perform, respondent violated Civil Code section 2944.7(a)(1), and in turn violated Business and Professions Code section 6106.3.

Case No. 16-O-16123 (Complainant: Kevin McCormack)

FACTS:

42. On April 21, 2015, Kevin McCormack ("McCormack"), a resident of Washington, entered into a fee agreement to hire respondent to perform legal services, including specifically to renegotiate his home mortgage loan with his mortgage lender, Wells Fargo Bank, in connection with his property located in Tacoma, Washington.

43. At no time has respondent ever been licensed to practice law in Washington.

44. Pursuant to Washington Rules of Professional Conduct, rule 5.5(b)(2) provides that a lawyer who is not admitted to practice in Washington shall not "hold out to the public or otherwise represent that the lawyer is admitted to practice" in Washington.

45. Between May 27, 2015 and September 10, 2015, respondent charged and collected illegal fees totaling \$2,279 from McCormack for the legal services.

46. On June 29, 2015, respondent's firm submitted an authorization form to his mortgage lender and thereafter performed loan modification services on McCormack's behalf through October 7, 2015, and in so doing, Respondent held himself out as being entitled to practice law in Washington to the lender. McCormack did not obtain any loan modification relief through respondent's services.

47. By holding himself out to both McCormack at the time of retention and to McCormack's mortgage lender, where he was not licensed to do so, respondent engaged in unauthorized practice of law in violation of Washington Rules of Professional Conduct, rule 5.5(b)(2). Moreover, because respondent was not entitled to practice law in Washington when he collected the legal fees from McCormack, the legal fees he accepted were also illegal.

48. After McCormack submitted a State Bar complaint, respondent partially refunded \$838 to McCormack in November 2016.

#### CONCLUSIONS OF LAW:

49. By agreeing to attempt to negotiate a home mortgage loan modification on McHale's behalf and sending correspondence to his lender, when to do so was in violation of the regulations of the profession in New Mexico, namely New Mexico Rules of Professional Conduct, rule 16-505(D)(2), respondent willfully violated the Rules of Professional Conduct, rule 1-300(B).

50. By charging and collecting legal fees totaling \$1,894 from McHale between May 26, 2015 and June 15, 2015, to perform legal services in New Mexico, where he was not licensed to practice law, respondent charged and collected an illegal fee, in willful violation of Rules of Professional Conduct, rule 4-200(A).

#### AGGRAVATING CIRCUMSTANCES.

**Prior Record of Discipline (Std. 1.5(a)):** Respondent has one prior record of discipline from 2015 since being admitted to practice law on June 23, 1978, wherein respondent stipulated to discipline in State Bar case numbers 14-O-06310, et al., consisting of a two (2) year stayed suspension and a two (2) year probation with conditions. The ensuing disciplinary order became effective on March 18, 2016.

Specifically, respondent stipulated to five ethical violations in two client matters, including two violations of Business and Professions Code section 6106.3 for charging and collecting illegal fees between August 2010 and March 2014, as well as two violations of section 6106.3 for failing to provide the requisite disclaimer to the two clients under Civil Code section 2944.6. Respondent also stipulated to failing to supervise employees who submitted a loan modification package against the clients' instructions in violation of rule 3-110(A) of the Rules of Professional Conduct. In aggravation, respondent stipulated to multiple acts of misconduct. In mitigation, respondent was given credit for a pre-filing stipulation and no prior record of discipline over 32-years prior to his misconduct at the time.

///  
///  
///

**Pattern of Misconduct (Std. 1.5(c)):** Respondent's misconduct constitutes a pattern of misconduct. Typically a pattern of misconduct requires serious misconduct over a sufficient period of time to demonstrate the pattern and may require a common thread between the instances of the misconduct. (See *Young v. State Bar* (1990) 50 Cal.3d 1204, 1216-1217; *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 93.)

A common thread may be based on present misconduct coupled with misconduct in Respondent's prior record of discipline. (*Twohy v. State Bar* (1989) 48 Cal.3d 502, 512-513.) Taking Respondent's prior misconduct into consideration with the instant misconduct, the evidence shows that Respondent's misconduct began in August 2010 and continued through May 2015, wherein in eight different client matters, Respondent repeatedly collected illegal fees totaling \$21,502 to perform loan modification services or obtain other forms of loan forbearance, thereby demonstrating a common thread. (E.g., *Lester v. State Bar* (1976) 17 Cal.3d 547, 552 [four abandonments found to be a pattern of misconduct].) Additionally six years is sufficient period of time to show a pattern of misconduct. (E.g., *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1, 13 [misconduct over 6 years deemed a pattern].) Accordingly, respondent's misconduct demonstrates a pattern of misconduct of serious misconduct over a lengthy period of time with a common thread, a serious aggravating factor.

A pattern of misconduct is "egregious aggravation" and generally warrants disbarment. (See, e.g., *Twohy v. State Bar* (1989) 48 Cal.3d 502, 512-513 [An attorney's record that "evidences a serious pattern of misconduct involving recurring types of wrongdoing" "clearly warrants disbarment" in the absence of compelling mitigating circumstances], internal citations omitted; see also *In the Matter of Valinotti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 566 ["when an attorney commits multiple acts of similar misconduct or recurring types of wrongdoing, ... the gravity of each successive violation increases"].) However, as explained in the legal analysis section, respondent's misconduct does not warrant disbarment in this matter.

**Significant Harm (Std. 1.5(j)):** Respondent's misconduct in collecting illegal fees and engaging in the unauthorized practice of law caused significant harm to his clients because in all cases, the clients paid significant amounts of legal fees, were financially vulnerable, and the out-of-state clients also received incompetent legal advice from an attorney who was otherwise not licensed to practice law in that jurisdiction.

**Indifference (Std. 1.5(k)):** Respondent's misconduct is surrounded by indifference toward rectification and atonement for the consequences of his misconduct. On December 20, 2010, prior to respondent's instant misconduct, he was issued a warning letter in a separate State Bar case for engaging in the unauthorized practice of law in Pennsylvania, where he was not licensed to practice law, and for charging the Pennsylvania client an illegal fee to perform loan modification services in that jurisdiction. By continuing to engage in very similar misconduct in the instant cases after receiving that warning letter, respondent's misconduct reflects indifference.

**Failure to make restitution (Std. 1.5(m)):** While respondent has made full restitution to four of the six clients involved and partial restitution to the other two (all of which came after the clients submitted State Bar complaints), Respondent still owes restitution in the amount of \$2,441, including \$1,000 to Michelle Moschides, and \$1,441 to Kevin McCormack.

**Vulnerability of Victim (Std. 1.5(n)):** All of the clients involved were extremely vulnerable due to their financial situations and the time-sensitive nature of their cases.

## MITIGATING CIRCUMSTANCES.

**Prefiling Stipulation:** While some of the instant facts are easily provable, by entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative 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 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

## AUTHORITIES SUPPORTING DISCIPLINE.

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

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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

In this matter, respondent admits to committing thirteen acts of professional misconduct. Standard 1.7(a) requires that where a respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.” The most severe sanctions applicable to respondent's misconduct here are Standards 2.19 and 1.8(a), which apply to his violation of Business and Professions Code section 6106.3 and his prior record of discipline.

Standard 2.19 provides that disbarment or actual suspension is the presumed sanction for any violation of the State Bar Act, not otherwise specified in the Standards, which includes Business and Professions Code section 6106.3.

Standard 1.8(a) provides that if a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time



and the previously misconduct was not serious enough that imposing greater discipline would be manifestly unjust. Applying the progressive disciplinary recommendation of Standard 1.8(a) here, the minimum discipline warranted for respondent's misconduct must include a period of actual suspension, because the prior discipline was recent and serious.

The totality of respondent's current and prior misconduct reflects ongoing misconduct that spanned 6 years between 2010 through 2015, and eight different clients involving significant amounts of illegal fees (\$21,502), the unauthorized practice of law in 5 distinct jurisdictions, indifference, and significant harm to vulnerable clients for which he still has not made full restitution. Accordingly, his misconduct is very serious and reflects a pattern of misconduct, which would typically warrant disbarment. A pattern of misconduct is "egregious aggravation" and generally warrants disbarment. (See, e.g., *Twohy v. State Bar* (1989) 48 Cal.3d 502, 512-513 [An attorney's record that "evidences a serious pattern of misconduct involving recurring types of wrongdoing" "clearly warrants disbarment" in the absence of compelling mitigating circumstances], internal citations omitted.)

While respondent's prior record of discipline and indifference after receiving a warning letter constitute aggravating circumstances, because the prior misconduct was contemporaneous with the instant misconduct and the instant misconduct occurred prior to respondent having an opportunity to heed the import of his prior discipline, the aggravating force of the prior discipline is diminished and it is otherwise appropriate to take into consideration respondent's 32-years of discipline-free practice prior to the first act of misconduct, and in so doing, disbarment is not warranted in the current case. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 171 ["the prior misconduct occurred during the same time period as the present misconduct and both the prior and current misconduct occurred within a narrow time frame. Therefore it is appropriate to consider respondent's approximately 28 years of blemish-free practice prior to the first act of misconduct as a mitigating circumstance."]; see also *Shapiro v. State Bar* (1990) 51 Cal.3d 251, 259 [where attorney's three instances of discipline occurred within a fairly narrow time frame, his 16-year discipline-free practice prior to the first act of misconduct constituted a mitigating factor].) Accordingly, while respondent's misconduct did not occur in a narrow time frame, it did occur in the same time period and before the imposition of his prior discipline, and therefore consideration must be given to Respondent's 32-year discipline-free record of practice prior to his first act of misconduct in 2010. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [20 years of discipline-free is "highly significant"]; *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 225 [30 years of discipline-free practice was "important" mitigating factor].) Moreover, while not a mitigating circumstance, respondent's payment of \$19,061 of the \$21,502 illegal fees he collected demonstrates respondent's willingness and ability to conform to his ethical obligations.

Accordingly, disbarment is not an appropriate sanction in this matter, however, based on the gravity and degree of respondent's misconduct, a lengthy period of actual suspension is necessary and therefore discipline consisting of a two (2) year stayed suspension and a two (2) year probation with conditions, including a one (1) year actual suspension and until he makes full restitution, is appropriate discipline to protect the public, the courts and the legal profession; maintain the highest professional standards; and preserve public confidence in the legal profession.

Relevant case law also supports the recommended discipline. In *In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437, the Court imposed a six (6) month actual suspension and until he made restitution of \$11,500 in illegal fees he collected from two clients in violation of Business and Professions Code section 6106.3. In aggravation, DeClue had a prior record of discipline (a two-year stayed suspension), and some of his misconduct overlapped with his prior misconduct and

the Court found DeClue's continued violations of the same nature to be significantly aggravating. Moreover, the Court found that DeClue's misconduct caused significant harm to his clients, and exploited their financial desperation. The Court also found uncharged misconduct on the basis of failing to supervise his staff and aided his staff in the unauthorized practice of law by delegating his loan modification work to his staff. Here, respondent's misconduct is similar to DeClue's except involves many more clients (6 compared to 2), the unauthorized practice of law in five jurisdictions, involves more illegal fees, indifference and the serious aggravating factor of a pattern of misconduct. Accordingly, his misconduct warrants more serious discipline than imposed in *DeClue*.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of June 28, 2017, the discipline costs in this matter are approximately \$8,345. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

#### **EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT**

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

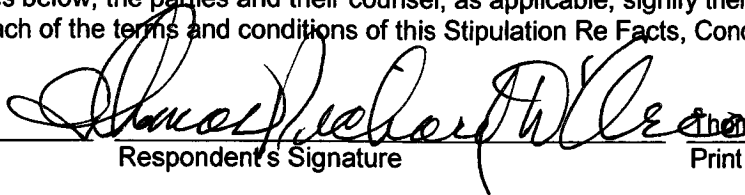
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In the Matter of: THOMAS RICHARD D'ARCO	Case number(s): 14-O-04331, 14-O-05378, 15-O-12294, 15-O-13496, 16-O-11887, 16-O-16123
--	--

### 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.

June 29, 2017  
Date



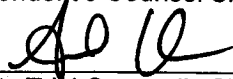
Respondent's Signature

Thomas Richard D'Arco  
Print Name

Date

June 29, 2017  
Date

Respondent's Counsel Signature



Deputy Trial Counsel's Signature

Print Name

Anand Kumar  
Print Name

In the Matter of: THOMAS RICHARD D'ARCO	Case Number(s): 14-O-04331, 14-O-05378, 15-O-12294, 15-O-13496, 16-O-11887, 16-O-16123
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### ACTUAL SUSPENSION ORDER

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

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

1. On page 2 of the stipulation, in paragraph B(1)(d), the phrase "two (2) year stayed suspension" is MODIFIED to read: "one year stayed suspension."
2. On page 5 of the stipulation, in paragraph E(6), the "X" in the box is DELETED to remove the probation condition requiring the assignment of a probation monitor. The Office of Probation does not currently use probation monitors.
3. On page 5 of the stipulation, in paragraph E(8): the "X" in the first box is DELETED to remove the probation condition requiring that respondent attend and successfully complete the State Bar's Ethics School; an "X" is INSERTED in the second box to expressly provide that no Ethics School probation condition is recommended; and the following text is INSERTED after the word "Reason."

Respondent was required to attend and successfully complete Ethics School as one of the conditions of the two-year disciplinary probation imposed on him under the Supreme Court's February 17, 2016, order in case number S231088 (State Bar Court case number 14-O-06310, etc.). Because all of the misconduct found in the present proceeding occurred before February 17, 2016, respondent need not attend Ethics School again. (Cf. Rules Proc. of State Bar, rule 5.135(A).)

4. On page 6 of the stipulation, in paragraph F(1), the "X" in the first box is DELETED to remove the requirement that respondent take and pass the Multistate Professional Responsibility Examination (MPRE); an "X" is INSERTED in the second box to provide that no MPRE requirement is recommended; and the following text is INSERTED after the word "Reason."

In case number S231088 (State Bar Court case number 14-O-06310, etc.), the Supreme Court ordered respondent to take and pass the MPRE within one year after the effective date of its February 17, 2016, order. Because all of the misconduct found in the present proceeding occurred before February 17, 2016, respondent need not again be ordered to take and pass the MPRE. (Cf. *Rhodes v. State Bar* (1989) 49 Cal.3d 50, 61; *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 286.)

5. On page 7 of the stipulation, section "a. Restitution," is MODIFIED to provide (1) that the principal amount of restitution respondent is to pay Michelle Moschides is \$2,500 with interest

(Do not write above this line.)

thereon accruing from June 12, 2015; and (2) that the interest on the \$1,441 in restitution that respondent is to pay Kevin McCormack accrues from September 10, 2015.

6. On page 15 of the stipulation, in the second to the last paragraph, which begins "Failure to make restitution..." the last clause is MODIFIED to provide that "respondent still owes restitution totaling \$3,941 (\$2,500 to Michelle Moschides plus \$1,441 to Kevin McCormack)."

This order approves the foregoing stipulation regarding facts, conclusions of law, and disposition as supplemented by the parties' supplement, which the court filed on July 26, 2017, and that is attached to this order.

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.)**

July 26, 2017

Date

Cynthia Valenzuela  
CYNTHIA VALENZUELA  
Judge of the State Bar Court

ORIGINAL

1 STATE BAR OF CALIFORNIA  
2 OFFICE OF CHIEF TRIAL COUNSEL  
3 STEVEN J. MOAWAD, No. 190358  
4 CHIEF TRIAL COUNSEL  
5 DONNA S. HERSHKOWITZ, No. 172480  
6 DEPUTY CHIEF TRIAL COUNSEL  
7 RENE L. LUCARIC, No. 180005  
8 ASSISTANT CHIEF TRIAL COUNSEL  
9 MELANIE J. LAWRENCE, No. 230102  
10 SUPERVISING ATTORNEY  
11 ANAND KUMAR, No. 261592  
12 SENIOR TRIAL COUNSEL  
13 845 South Figueroa Street  
14 Los Angeles, California 90017-2515  
15 Telephone: (213) 765-1714

FILED P.B.  
JUL 26 2017  
STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

10 STATE BAR COURT

11 HEARING DEPARTMENT - LOS ANGELES


13 In the Matter of: ) Case Nos. 14-O-04331, 14-O-05378,  
14 THOMAS RICHARD D'ARCO, ) 15-O-12294, 15-O-13496,  
15 No. 79929, ) 16-O-11887, 16-O-16123  
16 A Member of the State Bar. ) SUPPLEMENT TO STIPULATION  
REGARDING FACTS, CONCLUSIONS OF  
LAW, AND DISPOSITION

17 Per this Court's July 18, 2017 Order requesting the parties to file a supplement to the  
18 stipulation lodged on June 30, 2017 in the above-matters, the State Bar provides marked as  
19 Exhibit 1 for the Court's reference a certified copy of respondent Thomas Richard D'Arco's  
20 ("respondent") prior record of discipline in State Bar case numbers 14-O-06310, et al.

21 Respectfully submitted,

22 THE STATE BAR OF CALIFORNIA  
23 OFFICE OF CHIEF TRIAL COUNSEL

24  
25 DATED: July 20, 2017

26 By:   
27 Anand Kumar  
28 Senior Trial Counsel

SUPREME COURT  
**FILED**

(State Bar Court Nos. 14-O-06310; 15-O-10704)

FEB 17 2016

S231088

Frank A. McGuire Clerk

**IN THE SUPREME COURT OF CALIFORNIA** Deputy

**En Banc**

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In re THOMAS RICHARD D'ARCO on Discipline

---

The court orders that Thomas Richard D'Arco, State Bar Number 79929, is suspended from the practice of law in California for one year, execution of that period of suspension is stayed, and he is placed on probation for two years subject to the following conditions:

1. Thomas Richard D'Arco must comply with the conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on October 6, 2015; and
2. At the expiration of the period of probation, if Thomas Richard D'Arco has complied with the terms of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Thomas Richard D'Arco must also take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order and provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. One-half of the costs must be paid with his membership fees for each of the years 2017 and 2018. If Thomas Richard D'Arco 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.

I, Frank A. McGuire, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

\_\_\_\_ day of FEB 17 2016 20  
Clerk

By:   
Deputy

**CANTIL-SAKAUYE**

Chief Justice

100 440 077

ORIGINAL

(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>STAYED SUSPENSION</b>		
<b>Counsel For The State Bar</b>  <b>Agustin Hernandez</b> <b>Deputy Trial Counsel</b> <b>845 South Figueroa Street</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1713</b>  <b>Bar # 161625</b>	<b>Case Number(s):</b> <b>14-O-06310</b> <b>15-O-10704</b>	<b>For Court use only</b>  <div style="text-align: center;"> <b>PUBLIC MATTER</b>   <b>FILED</b>   <b>OCT 06 2015</b>  <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b> </div>
<b>In Pro Per Respondent</b>  <b>Thomas Richard D'Arco</b> <b>7301 Topanga Canyon Blvd., Ste. 203</b> <b>Canoga Park, CA 91303</b> <b>(818) 992-9900</b>  <b>Bar # 79929</b>	<b>Submitted to: Settlement Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND</b> <b>DISPOSITION AND ORDER APPROVING</b>  <b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter of:</b> <b>THOMAS RICHARD D'ARCO</b>  <b>Bar # 79929</b>  <b>A Member of the State Bar of California</b> <b>(Respondent)</b>		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **June 23, 1978**.
- (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 **11** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

*B. 9.22*



(Do not write above this line.)

- (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 billing cycles following the effective date of the Supreme Court order.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
- ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
- ☐ Costs are entirely waived.

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

- (1) ☐ **Prior record of discipline**
- (a) ☐ State Bar Court case # of prior case
- (b) ☐ Date prior discipline effective
- (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
- (d) ☐ Degree of prior discipline
- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) ☐ **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..
- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.

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- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See Attachment to Stipulation, at page 8.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances**

**C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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.

(Do not write above this line.)

- (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**

**No Prior Discipline - See Attachment to Stipulation, at page 8.**

**Prefiling Stipulation - See Attachment to Stipulation, at page 8.**

**D. Discipline:**

- (1) ☒ **Stayed Suspension:**

- (a) ☐ Respondent must be suspended from the practice of law for a period of **one year**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general 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 **two 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.

(Do not write above this line.)

- (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.
- (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: .
- (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 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: .
- (2) ☐ **Other Conditions:**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      THOMAS RICHARD D'ARCO

CASE NUMBERS:                      14-O-06310 and 15-O-10704

**FACTS AND CONCLUSIONS OF LAW.**

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

Case No. 14-O-06310 (Complainant: Caridad Perez)

**FACTS:**

1. On August 26, 2010, Caridad Perez employed Respondent to provide home mortgage loan modification services and other mortgage loan forbearance services pertaining to her residential property located in California.
2. Between August 26, 2010, and October 27, 2010, Perez paid Respondent a total of \$2,500 in attorney's fees for the mortgage loan modification services and other mortgage loan forbearance services.
3. Prior to charging and collecting any of the advanced attorney's fees from Perez, Respondent had not fully performed each and every service that Respondent had been contracted to perform or represented that he would perform.
4. Prior to entering into a fee agreement for home mortgage loan modification services and other mortgage loan forbearance services with Perez on August 26, 2010, Respondent failed to provide the following separate written statement, in not less than 14-point bold type, as required by Civil Code, section 2944.6:

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting [www.hud.gov](http://www.hud.gov).

**CONCLUSIONS OF LAW:**

5. By negotiating, arranging, and offering to perform a mortgage loan modification and other mortgage loan forbearance for a fee paid by Perez, and demanding, charging, collecting and receiving fees prior to fully performing each and every service that Respondent had contracted to perform or represented that he would perform, in violation of Section 2944.7(a)(1) of the Civil Code, Respondent wilfully violated of Business and Professions Code section 6106.3(a).

6. By failing to provide a separate written statement, in not less than 14-point bold type, as required by Civil Code, section 2944.6, prior to entering into a fee agreement for home mortgage loan modification services and other mortgage loan forbearance services with Perez on August 26, 2010, Respondent wilfully violated of Business and Professions Code, section 6106.3.

Case No. 15-O-10704 (Complainant: Howard and Michelle Riscen)

**FACTS:**

7. On March 25, 2014, Howard and Michelle Riscen employed Respondent to provide home mortgage loan modification services and other mortgage loan forbearance services pertaining to their residential property located in California.

8. On March 31, 2014, the Riscens paid Respondent \$5,850 in attorney's fees for the mortgage loan modification services and other mortgage loan forbearance services.

9. Prior to charging and collecting any of the advanced attorney's fees from the Riscens, Respondent had not fully performed each and every service that Respondent had been contracted to perform or represented that he would perform.

10. Prior to entering into a fee agreement for home mortgage loan modification services and other mortgage loan forbearance services with the Riscens on March 25, 2014, Respondent failed to provide the following separate written statement, in not less than 14-point bold type, as required by Civil Code, section 2944.6:

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting [www.hud.gov](http://www.hud.gov).

11. Respondent failed to properly supervise his employees which resulted in his employees informing the Riscens that Respondent's office had submitted a home mortgage loan modification request and a settlement proposal of a home equity line of credit to the Riscens' lenders when Respondent's office had not. Thereafter, on November 20, 2014, Respondent's employees submitted a loan modification request and a settlement proposal to the lenders on behalf of the Riscens even though the Riscens had previously instructed Respondent's employees not to submit a loan modification request or settlement proposal on their behalf. This was done without Respondent's knowledge and consent.

**CONCLUSIONS OF LAW:**

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

13. By failing to provide a separate written statement, in not less than 14-point bold type, as required by Civil Code, section 2944.6, prior to entering into a fee agreement for home mortgage loan modification services and other mortgage loan forbearance services with the Riscens on March 25, 2014, Respondent wilfully violated of Business and Professions Code, section 6106.3.

14. By failing to properly supervise his employees, which resulted in improper information being conveyed and work being done contrary to his clients' instructions, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

#### **AGGRAVATING CIRCUMSTANCES.**

**Multiple Acts of Misconduct (Std. 1.5(b)):** Respondent committed five acts of misconduct by charging and collecting advanced fees for loan modification services in two client matters, failing to provide these clients with the written statement required by Civil Code, section 2944.6, and failing to perform legal services with competence in one matter.

#### **MITIGATING CIRCUMSTANCES.**

**No Prior Discipline:** Although the misconduct here is serious, Respondent has 37 years of practice without any discipline which is considered highly significant mitigation. (*Friedman v. State Bar* (1990) 50 Cal.3d 235 [Practicing law for over 20 years with no prior discipline was "highly significant"].)

**Prefiling Stipulation:** Respondent is entitled to mitigation for entering into this stipulation prior to filing a notice of disciplinary charges, thereby preserving State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

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

Although not binding, the Standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the Standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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

In this matter, Respondent admits to committing five acts of professional misconduct. Standard 1.7(a) requires that where a Respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

The most severe sanction applicable to respondent's misconduct is found in Standard 2.18, which applies to respondent's violations of Business and Professions Code, sections 6106.3. Standard 2.18 provides that actual suspension or disbarment is the presumed sanction for any violation of a provision of Article 6 of the Business and Professions Code, not otherwise specified in the Standards. In this matter, for the reasons below, a deviation from the Standards is appropriate.

In evaluating Respondent's misconduct and determining the appropriate level of discipline, Standard 1.7(c) provides that when mitigating circumstances are found, they should be considered alone and in balance with any aggravating circumstances. If the net effect demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose a lesser sanction than what is otherwise specified in a given Standard. On balance, a lesser sanction is appropriate in cases involving minor misconduct, where there is little or no harm to the client, the public, the legal system, or the profession, and where the record demonstrates that the member is willing and has the ability to conform to ethical responsibilities in the future.

Here, Respondent's 37 years of practice without any discipline is highly significant mitigation. It suggests the misconduct was aberrant. Respondent is also entitled to mitigation for entering into a stipulation prior to filing a notice of disciplinary charges. Respondent's multiple acts of misconduct are an aggravating circumstance. On balance, Respondent's misconduct is significantly mitigated by his 37 years of practicing without discipline. Further, the seriousness of Respondent's misconduct is lessened by refunding the illegal fees to his clients prior to entering into this stipulation. Since Respondent refunded the illegal fees, there was little or no harm to the clients, the public, the legal system, or to the profession. By refunding fees and entering into this stipulation, Respondent has demonstrated that he is willing and able to conform to ethical responsibilities in the future.

In consideration of respondent's misconduct in two client matters, the applicable standards, the mitigating circumstances, and the aggravating circumstances, actual suspension is not necessary for public protection. A one-year stayed suspension with two years of probation is appropriate.

The level of discipline is consistent with case law involving similar misconduct. In *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, an attorney received discipline consisting of a two-year stayed suspension and two years of probation with conditions including an actual suspension of six months and until he pays restitution. Taylor collected illegal fees in violation of Civil Code, section 2944.6(a) from eight clients, and failed to provide one client with the written statement required by Civil Code, section 2944.6. In aggravation, Taylor committed multiple acts of misconduct, caused significant harm to his clients, and demonstrated indifference toward rectification or atonement for the consequences of his misconduct. In mitigation, he presented evidence of good character.



Here, Respondent's misconduct was less egregious and warrants lesser discipline. Respondent's misconduct involved two clients while *Taylor* involved eight clients. Taylor was indifferent about his misconduct. In contrast, by entering into this stipulation, Respondent has acknowledged his wrongdoing. Respondent has also already refunded the illegal fees to both clients. Although Taylor did not have a prior record of discipline, it was not considered in mitigation because he had only been practicing for a short period of time when he committed the misconduct. By contrast, Respondent's 37 years of practicing without discipline is considered highly significant mitigation. Given that Taylor received a six-month actual suspension for his misconduct, a one-year stayed suspension with two years of probation is appropriate here.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of September 3, 2015, the prosecution costs in this matter are \$4,044. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

#### **EXCLUSION FROM MCLE CREDIT**

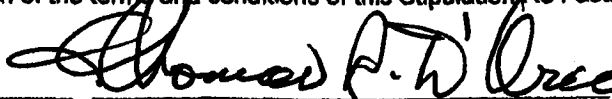
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational courses to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

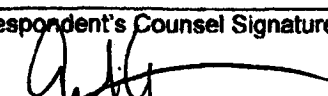
(Do not write above this line.)

In the Matter of: <b>THOMAS RICHARD D'ARCO</b>	Case number(s): <b>14-O-06310</b> <b>15-O-10704</b>
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### SIGNATURE OF THE PARTIES

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

<u>9/24/15</u>	<u></u>	<u>THOMAS RICHARD D'ARCO</u>
Date	Respondent's Signature	Print Name

<u>September 28, 2015</u>	<u></u>	<u>AGUSTIN HERNANDEZ</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: THOMAS RICHARD D'ARCO	Case Number(s): 14-O-06310 15-O-10704
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### 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.

See attached Modifications to Stipulation.

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

Date

October 6, 2015

  
W. KEARSE MCGILL  
Judge of the State Bar Court

**MODIFICATIONS TO STIPULATION**

1. On page 1 of the stipulation, in box Submitted to: delete "Settlement Judge" and replace it with "Assigned Judge."
2. On page 3 of the stipulation, an "X" is INSERTED in box C(1) to provide that respondent is credited with full mitigation for not having a prior record of discipline.
3. On page 4 of the stipulation, an "X" is INSERTED in box D(1)(a) to provide that a one-year stayed suspension is imposed on respondent.
4. On page 8 of the Stipulation, in the paragraph titled "No Prior Discipline," on the fourth line, following the parenthetical description of *Friedman v. State Bar*, the following citation and parenthetical description are INSERTED: "*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13, and cases there cited [noting that the Supreme Court has repeatedly given mitigation for many years of misconduct free practice in cases involving serious misconduct]."
5. On page 10 of the stipulation, the text in the section titled "Exclusion From MCLE Credit," is MODIFIED to read in its entirety as follows: "In accordance with Rules of Procedure of the State Bar, rule 3201, Respondent will not receive any MCLE credit for completing the State Bar Ethics School."

-X-X-X-

## 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 6, 2015, 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:

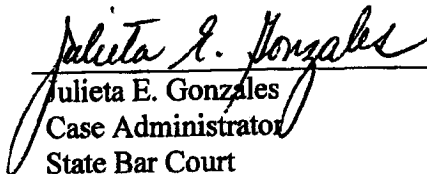
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

THOMAS RICHARD D'ARCO  
7301 TOPANGA CANYON BLVD  
STE 203  
CANOGA PARK, CA 91303

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

Agustin Hernandez, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 6, 2015.

  
Julieta E. Gonzales  
Case Administrator  
State Bar Court



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST July 19, 2017

State Bar Court, State Bar of California,  
Los Angeles

By  
Clerk

*Elizabeth Allen*

# DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): **14-O-04331, 14-O-05378, 15-O-12294, 15-O-13496, 16-O-11887, 16-O-16123**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017-2515, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

## SUPPLEMENT TO STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION



**By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.



**By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**



**By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').



**By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.



**By Electronic Service: (CCP § 1010.6)**

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.



**(for U.S. First-Class Mail)** in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*



**(for Certified Mail)** in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: \_\_\_\_\_ at Los Angeles, addressed to: *(see below)*



**(for Overnight Delivery)** together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: \_\_\_\_\_ addressed to: *(see below)*

Person Served	Business-Residential Address	Fax Number
Thomas Richard D'Arco	878 Via Mesa Verde Riverside, CA 92507-6470	Electronic Address

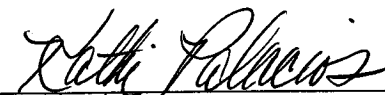
I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

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

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: July 20, 2017

SIGNED:

  
Kathi Palacios  
Declarant

## 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 July 26, 2017, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND  
ORDER APPROVING; SUPPLEMENT TO STIPULATION REGARDING FACTS,  
CONCLUSIONS OF LAW, AND DISPOSITION**

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

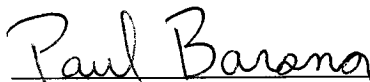
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**THOMAS RICHARD D'ARCO  
878 VIA MESA VERDE  
RIVERSIDE, CA 92507 - 6470**

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

**ANAND KUMAR, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 26, 2017.



Paul Barona  
Case Administrator  
State Bar Court