

(Do not write above this line.)

State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Charles T. Calix Deputy Trial Counsel 845 S. Figueroal Street Los Angeles, CA 900175 (213) 765-1255 Bar # 146853	Case Number(s): 14-O-04509, 15-O-11556 (INV) 15-O-12420(INV)	For Court use only FILED <i>YHC</i> JUL 31 2015 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent M. Cris Armenta Armenta Law Firm APC 1230 Rosecrans Avenue, Ste 300 Manhattan Beach, CA 90266 (310) 826-2826 Bar # 177403	PUBLIC MATTER	
In the Matter of: BRIAN JOSEPH KUCSAN Bar # 230951 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 3, 2004**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **15** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

kwiktag • 197 146 211



(Do not write above this line.)

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

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

- (1) ☒ **Prior record of discipline**
- (a) ☒ State Bar Court case # of prior case **12-O-15301, 12-O-15736, 12-O-16098, 12-O-16215, 13-O-11988 and 13-O-16206. See Attachment at page 11.**
- (b) ☒ Date prior discipline effective **October 17, 2014.**
- (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Six counts of violation of Business and Professions Code section 6106.3.**
- (d) ☒ Degree of prior discipline **Respondent was suspended from the practice of law for two years, execution of the suspension be stayed, and respondent was placed on probation for three years with certain terms and conditions, including an actual suspension of 60 days and until respondent paid restitution of \$5,800.**
- (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.

(Do not write above this line.)

- (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 Attachment on page 11.**
- (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 on page 11.**
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☒ **Restitution:** Respondent failed to make restitution. **See Attachment on page 11.**
- (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.
- (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:

Remedial Measures. See Attachment on page 11.
Prefiling Stipulation. See Attachment on page 12.

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:
- (b) ☒ The above-referenced suspension is stayed.
- (2) ☒ **Probation:**
- Respondent must be 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)
- (3) ☒ **Actual Suspension:**
- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **30 days**.

- 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: **Ethics School is not recommended, because effective October 17, 2014, respondent was ordered to provide satisfactory proof of attendance at a session of the Ethics School and passage of the test given at the end of that session to the Office of Probation in Case Nos. 12-O-15301, et al.**

(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: **Passage of the MPRE is not recommended, because effective October 17, 2014, respondent was ordered to provide proof of passage of the MPRE during the period of actual suspension or within one year, whichever period is longer, in Case Nos. 12-O-15301, et al.**

(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:**

(Do not write above this line.)

In the Matter of: BRIAN JOSEPH KUCCAN	Case Number(s): 14-O-04509, 15-O-11556, and 15-O-12421
-------------------------------------------------	-----------------------------------------------------------

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
Benigno and Zenaida Yuzon	\$11,250	November 16, 2009
Benigno and Zenaida Yuzon	\$3,250	February 8, 2010
Scarlett Dias	\$3,400	July 15, 2011
James Lathrop	\$4,050	August 15, 2011

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

b. Installment Restitution Payments

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

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

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

c. Client Funds Certificate

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

b. Respondent has kept and maintained the following:

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

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

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

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

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

d. Client Trust Accounting School

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

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: BRIAN JOSEPH KUCSAN

CASE NUMBERS: 14-O-04509, 15-O-11556, and 15-O-12421

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 14-O-04509 (Complainants: Benigno and Zenaida Yuzon)

FACTS:

1. On November 5, 2009, Benigno and Zenaida Yuzon (the "Yuzons") employed respondent for home mortgage loan modification services and other loan forbearance services on six pieces of real property.
2. On November 16, 2009, the Yuzons paid respondent \$11,250 in advanced attorney's fees.
3. On February 8, 2010, the Yuzons paid respondent an additional \$3,250 in advanced attorney's fees.
4. Respondent did not fully perform each and every home modification loan service he had contracted to perform or represented that he would perform for the Yuzons prior to February 8, 2010.
5. To date, respondent has not refunded the advanced attorney's fees paid by the Yuzons.

CONCLUSION OF LAW:

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

Case No. 15-O-11556 (Complainant: Scarlett Dias)

FACTS:

7. In June 2011, Scarlett Dias ("Dias") employed respondent for home mortgage loan modification services and other loan forbearance services.
8. On July 15, 2011, Dias paid respondent \$2,250 in advanced attorney's fees.

9. On September 1, 2011, Dias paid respondent \$650 in advanced attorney's fees.

10. On June 5, 2012, respondent obtained a loan forbearance for Dias from her lender. The loan forbearance required Dias to make monthly mortgage payments for five months. Thereafter, the lender would provide Dias with a permanent modification.

11. On June 26, 2012, Dias paid respondent \$500 in advanced attorney's fees.

12. Respondent did not fully perform each and every home modification loan service he had contracted to perform or represented he would perform for Dias prior to June 26, 2012.

13. To date, respondent has not refunded the advanced attorney's fees paid by Dias.

CONCLUSION OF LAW:

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

Case No. 15-O-12420 (Complaint: James Lathrop)

FACTS:

15. On August 12, 2011, James Lathrop ("Lathrop") employed respondent for home mortgage loan modification services and other loan forbearance services.

16. On August 15, 2011, Lathrop paid respondent \$2,250 in advanced attorney's fees.

17. On September 19, 2011, Lathrop paid respondent \$650 in advanced attorney's fees.

18. On September 23, 2011, Lathrop paid respondent \$500 in advanced attorney's fees.

19. On October 16, 2011, Lathrop paid respondent \$650 in advanced attorney's fees.

20. Respondent did not fully perform each and every home mortgage loan service he had contracted to perform or represented that he would perform for Lathrop prior to October 16, 2011.

21. On May 17, 2012, Lathrop's lender denied his request for a loan modification or other loan forbearance, in part, because Lathrop had been offered a loan medication that he had not accepted prior to employing respondent.

22. To date, respondent has not refunded the advanced attorney's fees paid by Lathrop.

CONCLUSIONS OF LAW:

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

AGGRAVATING CIRCUMSTANCES

Prior Record of Discipline (Std. 1.5(a)): Respondent has one prior record of discipline. Effective October 17, 2014, the California Supreme Court ordered that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that respondent be placed on probation for three years with certain terms and conditions, including an actual suspension of 60 days and until respondent paid restitution of \$5,800. The discipline arose from respondent's stipulation in six client matters to six counts of violating Business and Professions Code section 6106.3 [violation of California Civil Code section 2994.7 by offering/negotiating to perform mortgage loan modification]. The misconduct occurred between November 2011 and April 2012. In aggravation, respondent's misconduct harmed his clients and there were multiple acts of misconduct. In mitigation, respondent had no prior record of discipline, took remedial measures, and entered into a pretrial stipulation.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent's receiving advanced fees to provide loan modification or other form of loan forbearance services on nine separate properties for three different clients prior to fully performing each and every home modification loan service he had contracted to perform or represented that he would perform constitutes multiple acts of misconduct. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646 [two counts of client abandonment and failing to cooperate in a State Bar investigation supported a finding of multiple acts of misconduct].)

Harm (Std. 1.5(j)): Respondent harmed his former clients by accepting advanced attorney's fees in violation of laws enacted to protect the public from fraudulent home mortgage loan modification services and other loan forbearance services, and by causing those clients financial distress by accepting funds they needed to pay their mortgages. (See *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 235, *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 475 [harm occurred each time that attorney breached his client's trust and by abdicating his fiduciary responsibilities], and *In the Matter of Scapa & Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635, 654 [disregarding fiduciary duties to clients constitutes harm to the clients].))

Failure to Make Restitution (Std. 1.5(m)): Respondent has not paid restitution of \$14,500 to the Yuzons, \$3,400 to Dias, or \$4,050 to Lathrop.

MITIGATING CIRCUMSTANCES

Remedial Measures: In June 2012, following an investigation by the State Bar into previous complaints by consumers concerning respondent's home mortgage loan modification services, the State Bar issued a warning letter to respondent and respondent attempted to reform his law practice to bring it into compliance with his legal and ethical responsibilities by ceasing to collect any attorney's fees until all loan modification services had been provided. The complaints at issue herein involve advanced

attorney's fees charged and collected by respondent for home loan modification services prior to respondent's receipt of the warning letter and the reformation of his law practice. (See *In the Matter of Sullivan* (1997) 3 Cal. State Bar Ct. Rptr. 608, 613 [remedial measures taken by an attorney to come into compliance with ethical duties may be deemed mitigating].)

Prefiling Stipulation: By entering into this stipulation prior to the filing of the Notice of Disciplinary Charges, respondent has acknowledged his wrongdoing and conserved the time and resources of the State Bar Court and State Bar. (See *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 violated Business and Professions Code section 6106.3. The most severe sanction applicable to respondent's misconduct is found in Standard 2.18, which states that actual suspension or disbarment is the presumed sanction for any violation of that section.

Standard 1.8(a) states 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 previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust. The prior discipline was neither remote in time because it was effective October 17, 2014, nor was the previous misconduct not serious in that respondent stipulated to a 60 day actual suspension for six counts of violating Business and Professions Code section 6106.3 that caused harm to his clients.

Therefore, the sanction in this matter must be greater than the previously imposed sanction of a 60 day actual suspension pursuant to Standard 1.8(a).

Here, there are no compelling mitigating circumstances. However, the current misconduct occurred prior to the misconduct giving rise to the prior record of discipline. Consequently, the misconduct does not present a pattern or respondent's unwillingness or inability to conform to ethical responsibilities, and therefore, progressive discipline is not warranted and contrary to case law as set forth below.

In *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646, the Review Department found that Bach's misconduct in his first disciplinary proceeding, which was not final at the time of his second disciplinary proceeding, was a factor in aggravation, but was diluted because it occurred before the notice to show cause had been served and therefore, " 'does not carry with it as full a need for severity as if the misconduct in the [prior] matter had occurred after respondent had been disciplined and had failed to heed the import of that discipline.' " (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.)"

In *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, Sklar was found culpable of six counts of misconduct in seven client matters, including the misappropriation of \$13,807.34 in trust funds, failure to perform competently, failure to communicate with clients and failure to advise clients of potential conflicts of interest, and failure to comply with the terms of a previously imposed disciplinary probation. The Hearing Department recommended that Sklar be actually suspended for two years and both parties appealed. One of the issues on appeal was whether the Hearing Department appropriately declined to consider Sklar's prior disciplinary matter, where he was actually suspended for 80 days, as aggravating because the misconduct in the prior matter and the cases at issue, aside from the probation violation, occurred during the same time period. (*Id.* at p. 618).

The Review Department held that the impact of a prior disciplinary matter was diminished because it occurred during the same time as the misconduct in the case at issue. (*Id.*) Accordingly, the Review Department considered the "totality of the findings in the two cases to determine what the discipline would have been had all the charged misconduct in this period been brought as one case." *Id.* *In the Matter of Sklar* is applicable here because respondent's misconduct in this matter occurred before the prior record of discipline. Therefore, it is appropriate to consider the totality of the misconduct in all nine matters to determine what the discipline would be had all the charged misconduct been brought now.

In the instant case, respondent violated Business and Professions Code section 6106.3 with regard to three clients. In aggravation, respondent has a prior record of discipline involving six clients, harmed his clients, committed multiple acts of misconduct, and failed to make restitution to the three clients. In mitigation, respondent implemented remedial measures after being notified that his loan modification practice violated Business and Professions Code section 6106.3, which occurred after the misconduct in this matter, and entered into a prefiling stipulation acknowledging his misconduct.

Following Standards 1.8(a) and 2.19, *In the Matter of Bach*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 646, and *In the Matter of Sklar*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 618, and considering the gravity of the misconduct in both disciplinary proceedings, the harm to the clients, the aggravating circumstances, the mitigating circumstances, the imposition of a two-year stayed suspension and three - year probation with conditions, including an actual suspension for an additional 30 days and until he

pays restitution, which will cause the length of respondent's total actual suspension to be at least 90 days, will be sufficient to protect the public, courts, and legal profession as set forth in Standard 1.1.

Those terms set forth above are consistent with *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, wherein Taylor was found culpable of eight counts of violating Business and Professions Code section 6106.3, and received a six month actual suspension and until he paid full restitution to the eight former clients. While they committed almost the same number of violations of section 6106.3, the notable distinction is that Taylor did not pay full restitution to any of his clients and continued to deny any wrongdoing throughout trial, which the Court found significant because his lack of insight suggested that his misconduct may reoccur. (*Id.* at p. 235). While he committed misconduct in a total of nine matters in the two disciplinary proceedings, respondent paid full restitution to four of his clients and has admitted wrongdoing by entering into stipulations resolving the two disciplinary proceedings.

In consideration of the foregoing, a two year stayed suspension and three year probation that requires an additional 30 day actual suspension and until payment of restitution in this second disciplinary proceeding, compliance with rule 9.20, California Rules of Court, and compliance with Standard 1.2(c)(ii) should he be actually suspended for two years or more is appropriate under the Standards and case law, and will serve the purpose of attorney discipline as set forth in Standard 1.1.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 14, 2015, the prosecution costs in these matters are approximately \$4,602. 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.

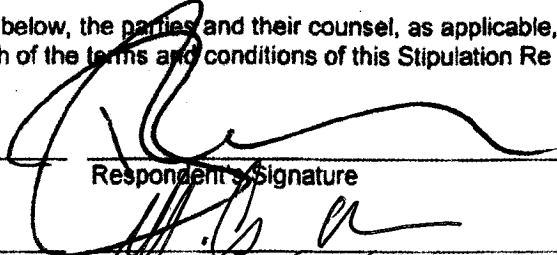
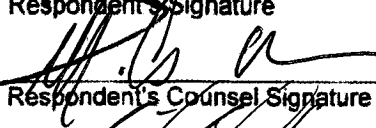
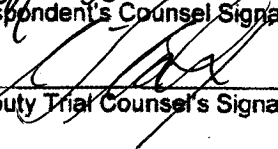
(Do not write above this line.)

In the Matter of:
BRIAN JOSEPH KUCSAN

Case number(s):
14-O-04509, 15-O-11556, and 15-O-12421

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>7/20/15</u> Date	 Respondent's Signature	<u>Brian Joseph Kucsan</u> Print Name
<u>7/20/15</u> Date	 Respondent's Counsel Signature	<u>M. Cris Armenta</u> Print Name
<u>7.21.15</u> Date	 Deputy Trial Counsel's Signature	<u>Charles T. Calix</u> Print Name

(Do not write above this line.)

In the Matter of:
BRIAN JOSEPH KUCCAN

Case Number(s):
14-O--04509, 15-O-11556 and 15-O-12421

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.

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

July 31, 2015

Rebecca Meyer Rosenberg

REBECCA MEYER ROSENBERG JUDGE PRO TEM
Judge of the State Bar Court

MODIFICATIONS TO STIPULATION

1. On page 7 of the Stipulation, at paragraph a., line 2, "and furnish satisfactory proof of restitution to the State Bar's Office of Probation" is added after "below".
2. On page 9 of the Stipulation, at numbered paragraph 4, line 2, "February 8, 2010" is deleted, and in its place is inserted "receiving the advanced attorney's fees".
3. On page 10 of the Stipulation, at numbered paragraph 12, line 2, "June 26, 2012" is deleted, and in its place is inserted "receiving the advanced attorney's fees".
4. On page 10 of the Stipulation, "Case No. 15-O-12420" located above "Facts:" is deleted, and in its place is inserted "Case No. 15-O-12421".
5. On page 10 of the Stipulation, at numbered paragraph 20, line 2, "October 16, 2011" is deleted, and in its place is inserted "receiving the advanced attorney's fees".
6. On page 13 of the Stipulation, second full paragraph, line 3, "it" is deleted, and in its place is inserted "the misconduct in the current matter".
7. On page 13 of the Stipulation, second full paragraph, line 4, "in the prior matter" is inserted between "cause" and "had".
8. On page 13 of the Stipulation, last partial paragraph at the bottom of the page, line 4, "two-year stayed suspension" is deleted, and in its place is inserted "one-year stayed suspension" to be consistent with the discipline recommendation set forth on page 4 of the Stipulation at paragraph D.(1)(a).
9. On page 13 of the Stipulation, last partial paragraph at the bottom of the page, lines 4-5, "three-year probation" is deleted, and in its place is inserted "two-year probation" to be consistent with the discipline recommendation set forth on page 4 of the Stipulation at paragraph D.(2).
10. On page 14 of the Stipulation, the second full paragraph is deleted, and in its place is inserted the following paragraph:

In consideration of the foregoing, a one-year stayed suspension and a two-year probation with conditions including a 30-day actual suspension that will continue until respondent pays restitution with interest to Benigno and Zenaida Yuzon, Scarlett Dias, and James Lathrop; compliance with California Rules of Court, rule 9.20 should respondent be actually suspended for 90 days or more; and compliance with standard 1.2(c)(1) should respondent be actually suspended for two years or more are appropriate under the standards and case law and will serve the purpose of attorney discipline as set forth in standard 1.1.

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 31, 2015, I deposited a true copy of the following document(s):

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

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

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

**MARIA C. ARMENTA
ARMENTA LAW FIRM APC
1230 ROSECRANS AVE
STE 300
MANHATTAN BCH, CA 90266**

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

CHARLES CALIX, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 31, 2015.



Tammy Cleaver
Case Administrator
State Bar Court