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**STATE BAR COURT
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LOS ANGELES**

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8 ROBERT G. SCURRAH, JR.

9 **STATE BAR COURT**

10 **HEARING DEPARTMENT- LOS ANGELES**

11 **In the Matter of:**) **Case No.: 14-O-4733, 14-O-4977**
12) **14-O-5709, 14-O-5807 DFM**
13 **ROBERT G. SCURRAH, JR.,**)
14 **State Bar Number 82766,**) **RESPONSE TO NOTICE OF**
15) **DISCIPLINARY CHARGES**
16 **A Member of the State Bar.**)
17) **[Rule of Procedure 5.43]**
18)
19)

20 **Address for Service**

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

23 **Response to Allegations**

24 1. Respondent admits the allegations of paragraph 1.

25 **Count 1 - Case No. 14-O-4733 (Bus. & Prof. Code §6106.3)**

26 2. Respondent denies the allegations of paragraph 2.

27 **Count 2 - Case No. 14-O-4977 (Bus. & Prof. Code §6106.3)**

28 3. Respondent denies the allegations of paragraph 3.

Count 3 - Case No. 14-O-5709 (Bus. & Prof. Code §6106.3)

1 **Count 3 - Case No. 14-O-5709 (Bus. & Prof. Code §6106.3)**

2 4. Respondent denies the allegations of paragraph 4.

3
4 **Count 4 - Case No. 14-O-5867 (Bus. & Prof. Code §6106.3)**

5 5. Respondent denies the allegations of paragraph 5.

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8 **Affirmative Defenses Applicable to Each Charge in this NDC**

9 **First Affirmative Defense**

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11 The Notice of Disciplinary Charges (NDC) fails to plead a disciplinable offense.

12 **Second Affirmative Defense**

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

16
17 **Third Affirmative Defense**

18 The State Bar of California is judicially estopped from contending that Civil Code
19 section 2944.7 applies to "loan modification services" which precede negotiation with the
20 lender servicer because of its position in *Duenas v. Brown*, case no. 10-CV-05884-RS,
21 United States District Court, Northern District of California (attached document 1, 63:14-
22 28, 7:1-5), which it successfully asserted to defeat Federal jurisdiction in that matter.

23
24 **Fourth Affirmative Defense**

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26 Disciplining Respondent under the State Bar's current interpretation of Cal. Civil
27 Code § 2944.7 will deprive him of a liberty interest without substantive due process
28

1 because; 1) Respondent has a constitutionally protected liberty interest in pursuing his
2 profession free from unreasonable government interference and 2) the State Bar's current
3 interpretation of § 2944.7 prevents Respondent from representing clients seeking loan
4 modifications to save their homes.
5

6 **Fifth Affirmative Defense**
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8 The State Bar's interpretation of § 2944.7 lacks a rational basis because it
9 contradicts the statute's text and, far from being rationally related to a proper legislative
10 goal, actively thwarts it.
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12 **Sixth Affirmative Defense**

13 Even if § 2944.7 prohibits separation of legal services, the Bar's own actions
14 rendered the statute unclear and highly debatable, thus precluding discipline.
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16 **Seventh Affirmative Defense**
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18 The State Bar of California is barred from prosecuting Mr. Scurrah by its
19 inequitable conduct including, but not limited to:

20 (1) adopting a construction of Civil Code section 2944.7 for disciplinary purposes
21 completely inconsistent with its position in *Duenas*;
22

23 (2) misleading Mr. Scurrah that CDA's fee agreement was in compliance with
24 applicable rules by affirmatively advising that separation of client services into separate
25 contracts was compliant with the law;
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Dated: May 15, 2015

By 

Mark N. Zanides
Attorney for Respondent
ROBERT G. SCURRAH

